TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 115. 154.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FILED SEPTEMBER 10, 1900.
(17900.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 415.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

VS.

THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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a *Transcript of record.*

In the United States circuit court of appeals for the seventh circuit, October term, A. D. 1899, No. 665. Interstate Commerce Commission, appellant, vs. The Chicago, Burlington and Quincy Railroad Company et al., appellees.

Mr. S. H. Bethea, counsel for appellant. Mr. C. M. Dawes, Mr. Lloyd W. Bowers, Mr. E. D. Kenna, Mr. Frank B. Kellogg, Mr. William Brown, Mr. Robert Mather, Mr. Robert Dunlap, Mr. W. T. Rankin, Mr. W. H. Blodgett, Mr. W. J. Scrafford, Mr. S. F. Andrews, Mr. Geo. R. Peck, Mr. Chas. B. Keeler, counsel for appellees.

Appeal from the circuit court of the United States for the northern district of Illinois, northern division.

Filed Mar. 12, 1900. Edward M. Holloway, clerk.

1 *Placita.*

Pleas in the circuit court of the United States for the northern division of the northern district of Illinois, begun and held in the United States court rooms, in the city of Chicago, in said district, before the Honorable Christian C. Kohlsaat, judge of the United States district court for the northern district of Illinois, on Monday, the fourth day of December, in the year of our Lord 1899, being one of the days of the October adjourned term of said court, 1899, and of our independence the 124th year.

S. W. BURNHAM, *Clerk.*

2 Be it remembered that on this day, to wit, the 3rd day of March, 1899, came The Interstate Commerce Commission, by Edw. A. Mosely, the secretary thereof, thereunto authorized, and filed in the office of the clerk of said court its petition, in the words and figures following, to wit:

In the circuit court of the United States for the northern district of Illinois.

THE INTERSTATE COMMERCE COMMISSION
v.
THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY; The Chicago Great Western Railway Company; The Chicago and North-Western Railway Company; The Chicago, Milwaukee and St. Paul Railway Company; The Chicago and Alton Railroad Company; The Chicago, Rock Island and Pacific Railway Company; The Atchison, Topeka and Santa Fe Railway Company; The Wabash Railroad Company; The Illinois Central Railroad Company.

To the circuit court of the United States, sitting in equity within and for the northern district of Illinois:

1. Your petitioner, The Interstate Commerce Commission, which was created and established, and now exists, under and in virtue of an act of

the Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, as amended by an act approved March 2, 1889, and as amended by an act approved February 10, 1891, and as amended by an act approved February 11, 1893, complaining, shows unto this honorable court that the Chicago, Burlington and Quincy Railroad Company is a corporation organized and existing under the laws of the State of Illinois; that the Chicago Great Western Railway Company is a corporation organized and existing under the laws of the State of Illinois; that the Chicago and North-Western Railway Company is a corporation organized and existing under the laws of the State of Illinois; that the Chicago, Milwaukee and St. Paul Railway Company is a corporation organized and existing under the laws of the State of Wisconsin, and has its principal office at Chicago, Illinois; that the Chicago and Alton Railroad Company is a corporation organized and existing
3 under the laws of the State of Illinois; that the Chicago, Rock Island and Pacific Railway Company is a corporation organized and existing under the laws of the State of Illinois; that the Atchison, Topeka and Santa Fe Railway Company is a corporation organized and existing under the laws of the State of Kansas, and has its principal office at Chicago, Illinois; that the Wabash Railroad Company is a corporation organized and existing under the laws of the State of Illinois; and that the Illinois Central Railroad Company is a corporation organized and existing under the laws of the State of Illinois, and that the said companies were at the time of the committing of the grievances hereinaftermentioned, and still are, common carriers engaged in the transportation of persons and property by their respective railroads, extending through and across several of the States of the United States by continuous carriage, and particularly were they then engaged in the transportation of cattle and other live stock from various points of the States of Kansas, Montana, North Dakota, South Dakota, and Texas, and the Indian Territory to Chicago, in the State of Illinois, and as such common carriers were, during the time aforesaid, and yet are, subject to the provisions of an act entitled "An act to regulate commerce," and said amendments thereto.

2. That the said defendants were heretofore, to wit, on the 1st day of September, 1896, duly impleaded in a controversy before the Interstate Commerce Commission, which was created and established, and yet exists, under and in virtue of an act of the Congress of the United States, "An act to regulate commerce," approved February 4, 1887, as amended by an act approved March 2, 1889, and as amended by an act approved February 10, 1891, and as amended by an act approved February 11, 1893, upon the petition of the Cattle Raisers' Association of Texas, an association composed of the owners and producers of cattle in the States of Kansas, Montana, North Dakota, South Dakota, and Texas, and the Indian Territory, on behalf of the members of said association and other persons interested in the shipment of live stock from various points in said States and Territory to Chicago, Ill., over the lines of railroad operated or controlled by said defendants; in which petition it was alleged that defendants in respect to such transportation were violating certain provisions of said "act to regulate commerce," and particularly that defendants imposed an unjust and unreasonable terminal charge at Chicago, Ill., of $2 per carload of live stock, and in imposing such terminal charge

said defendants unjustly discriminated against the said city of Chicag
Ill., as at large and more fully appears in and by said petition yet on fi
in the office of said Commission, a copy whereof is hereunto a
4 nexed and marked "Exhibit A," which petitioner prays may b
taken and read as a part of this petition.

That afterwards said Commission on, to wit, the 3d day of Septembe
1896, forwarded to each of said defendants, as required by said act, a cop
of said petition, Exhibit A hereto, and called upon them and each of the
to satisfy the complaint of the said association or to answer the same i
writing. That thereupon each of said defendants duly filed its answe
to said petition with said Commission.

3. That afterwards, to wit, on the 10th day of March, 1897, the Ch
cago Live Stock Exchange, an association of live stock commission mer
raisers and owners of cattle, filed its intervening petition therein, alleg
ing in substance the same violations of law by the defendants as thos
set forth in the said original petition. A copy of said intervening petitio
is hereto annexed and marked "Exhibit B." On March 11, 1897, a cop
of said intervening petition was by said Interstate Commerce Commissio
duly served on each of said defendants.

4. That each of said defendants filed with said Commission its answe
to said intervening petition, and afterwards said matters, being at issu
as aforesaid, duly came on for investigation and hearing of testimon
before said Commission duly and legally assembled for that purpose, whe
the said defendants, by their respective counsel, appeared and cross-ex
amined the witnesses that were produced and examined on behalf of sai
petitioners. And after said Commission had then and there heard al
of the testimony offered by said defendants, and the arguments of thei
attorneys, and said Commission being then and there fully advised in th
premises, thereupon found that the defendants herein had violated certai
of the provisions of the said "act to regulate commerce," and thereupo
said Commission duly and legally determined the matter and things i
controversy and at issue between said parties, and made a report in writ
ing in respect thereof, which included the findings of fact upon which th
conclusions of the said Commission were based, and among other thing
it was herein found that said terminal charge at Chicago, Ill., of $2 pe
carload of live stock was unjust, unreasonable, and unlawful, as at large
and more fully appears in and by the report of the determination of the
said Commission on file in its office in the city of Washington, in the
District of Columbia, a copy of which is hereunto annexed, the same being
marked "Exhibit C," and which petitioner herein requests may be taken
and read as a part of this petition.

That thereafter and forthwith, upon the determination of said issue
5 as aforesaid, the said Commission duly formulated an order and
notice in relation to the matters and things aforesaid, based upon
the findings and determination of the said Commission in respect thereto
agreeably to the requirements of the statute in such case made and pro-
vided, wherein said defendants were required to cease and desist, on or be-
fore the 1st day of April, 1898, from charging, demanding, collecting, or
receiving, in addition to their regular published transportation charges
the sum of $2 per carload of live stock as compensation for terminal serv-
ices rendered in making delivery thereof at the yards of the Union Stock

Yards and Transit Company, in the city of Chicago, Ill., which said order now remains in full force and effect, never having been vacated, set aside, altered, modified, or changed in any respect whatever, except as hereinafter in this petition stated, and is yet on file in the office of said Commission, a copy whereof is hereunto annexed, marked "Exhibit D," and which petitioner requests may be taken and read as a part of this petition.

That afterwards, to wit, on the 21st day of February, 1898, the said Commission, agreeably to the requirements of the statutes in that regard, duly caused properly authenticated copies of its report in respect thereto, as aforesaid, together with the order and notice aforesaid, to be delivered to each of said defendants.

That afterwards said defendants respectively filed with said Commission petitions for a rehearing of said cause and a reconsideration of the findings and conclusions in said report and order as aforesaid, which petition and full arguments thereon by counsel in behalf of said defendants were heard by said Commission on, to wit, the 1st day of April, 1898, and said Commission being fully advised in the premises thereafter, to wit, on the 4th day of August, 1898, under an additional report and opinion in said cause, and thereby and therein modified certain of the findings of fact as aforesaid, which more fully and at large appears in and by the report and determination of the said Commission on said petition for rehearing, yet on file in the office of said Commission, a copy whereof is hereunto annexed, the same being marked "Exhibit E," which petitioner requests may be taken and read as a part of this petition.

That afterwards, and forthwith upon the determination of the said petition for a rehearing as aforesaid, the said Commission formulated an order and notice in relation to the matters and things stated and charged in said petition for rehearing based upon the findings and determination of the said Commission with respect thereto agreeably to the provisions of law in that regard, which said order yet remains in full force and effect, never having been vacated, set aside, altered, modified, or changed in any respect whatever, and is yet on file in the office of the
6 said Commission, a copy of which is hereunto annexed, the same being marked "Exhibit F," and which petitioner requests may be taken and read as a part of this petition. That thereafter, to wit, on the 3rd day of September, 1898, the said Commission duly caused a properly authenticated copy of its report in respect to said petition for rehearing as aforesaid, together with the order and notice aforesaid, to be delivered to each of said defendants.

And thereupon petitioner shows this honorable court that it has not been made to appear to the said Commission that the said defendants, or any or either of them, have ceased and desisted from the violations of law as set forth in said reports and orders of said Commission, but on the contrary thereof the said defendants and each of them, unmindful of their duty and of the decision and determination of said Commission, as stated in its reports and orders as aforesaid, have repeatedly, through the officers, servants, agents, and attorneys, wholly disregarded and set at naught the authority and orders of the said Commission in that regard, and have willfully and knowingly violated and disobeyed the said order, and have from the time of the issuance and service of the said order and

notice as hereinbefore set forth, wholly neglected and refused, and each of said defendants still neglects and refuses to comply with the same, to wit, at Chicago, in the State of Illinois, in said district, in this, that the said defendants, nor either of them, have not ceased or desisted from charging, demanding, collecting, and receiving in addition to their regularly published transportation charges, the sum of $2 per carload of live stock as compensation for terminal services rendered in making delivery of live stock at the stock yards of the Union Stock Yards and Transit Company in the city of Chicago, State of Illinois, which charge was found and held in and by said report and opinion of said Commission to be unreasonable, unjust, and unlawful, and which said defendants and each of them were in and by the said order of the said Commission directed to cease and desist from charging, demanding, collecting, or receiving, but on the contrary thereof have each and every of them since continued to charge, collect, and receive the sum of $2 per carload of live stock as compensation for the services aforesaid which was so found to be unreasonable, unjust, and unlawful.

Wherefore the petitioner prays—

1. That a subpœna or other suitable process may issue requiring the said the Chicago, Burlington and Quincy Railroad Company; the Chicago Great Western Railway Company; the Chicago and North-Western Railway Company; the Chicago, Milwaukee and St. Paul Railway Company; the Chicago and Alton Railroad Company; the Chicago, Rock Island and Pacific Railway Company; the Atchison, Topeka and
7 Santa Fé Railway Company; the Wabash Railroad Company, and the Illinois Central Railroad Company, and each of them, upon such short notice as this honorable court shall deem reasonable, to appear before said court and then and there make answer to this petition, but not under oath, answer under oath being hereby waived, and then and there show cause why a decree of this honorable court should not be passed against said defendants, and each of them, requiring them to conform to the said orders of said Commission.

2. That upon the filing of this petition an order may be passed by this honorable court directing the method of service of notice of the pendency of this proceeding.

3. That such order or orders may be passed as will secure a speedy hearing and determination of the matters and things hereinbefore charged.

4. That such order or orders may be passed by this honorable court pending the cause as may be necessary for the prosecution of all such inquiries as the court may think needful to enable it to form a just judgment of the matters above charged.

5. That upon the final hearing hereof a decree may be entered granting to petitioner a writ of injunction, or other proper process, mandatory or otherwise, to restrain the said defendants, and each of them, and their respective officers, servants, and agents from further continuing in their violation of and disobedience to the said order of the Commission.

6. That a decree may be entered requiring the said defendants, and each of them, to pay such sum of money, not exceeding the sum of $500 for every day after a day to be named in such decree that they shall, respectively, fail to obey the said injunction or other proper process.

7. For such other and further relief in the premises as to the court may seem meet and just and the equities of the cause may require, as contemplated in the statute in such case provided.

THE INTERSTATE COMMERCE COMMISSION,
[SEAL.] By EDW. A. MOSELY,
The Secretary thereof, thereunto authorized.

8 EXHIBIT A.

Before the Interstate Commerce Commission.

THE CATTLE RAISERS' ASSOCIATION OF TEXAS, complainant,
v.
THE FORT WORTH AND DENVER CITY RAILWAY COMPANY and Morgan Jones, receiver thereof; The Wichita Valley Railway Company; The Missouri, Kansas and Texas Railway Company of Texas; The Missouri, Kansas and Texas Railway Company; The St. Louis Southwestern Railway Company of Texas; The St. Louis Southwestern Railway Company; The Gulf, Colorado and Santa Fe Railway Company; The St. Louis and San Francisco Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; The Houston and Texas Central Railroad Company; The Southern Pacific Company; The Texas and Pacific Railway Company; The Missouri Pacific Railway Company; The Chicago, Rock Island and Texas Railway Company; The Chicago, Rock Island and Pacific Railway Company; The Chicago and Alton Railroad Company; The Burlington and Missouri River Railroad Company in Nebraska; The Chicago, Burlington and Quincy Railroad Company; The Chicago and North-Western Railway Company; The Fremont, Elkhorn and Missouri Valley Railroad Company; The Chicago, Milwaukee and St. Paul Railway Company; The Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederick R. Coudert, receivers thereof; The Chicago Great Western Railway Company; The Illinois Central Railroad Company; The Wabash Railroad Company; The Union Stock Yards and Transit Company, defendants.

The petition of the above-named complainant respectfully shows:

I. That complainant is an association composed of more than 900 owners and producers of cattle in the States of Texas, Kansas,
9 Montana, North Dakota, South Dakota, and Indian Territory, and the control of over 2,000,000 head of cattle is represented in its membership. That cattle in carloads are being constantly shipped by or for members of complainant over lines of defendants from points in Texas and other States to Chicago, in the State of Illinois, and this proceeding

is brought by complainant on behalf of its members and other producers and owners of cattle in the State of Texas and said and other Western cattle-producing States and of shippers of cattle therefrom to Chicago aforesaid.

II. That the defendants above named, except the Union Stock Yards and Transit Company, are common carriers engaged in the railroad transportation of property, by continuous carriage or shipment, from points in the States of Texas, Kansas, Montana, North Dakota, South Dakota, Nebraska, Wyoming, Colorado, and Indian Territory to Chicago, in the State of Illinois; that said defendant, the Union Stock Yards and Transit Company, is either a common carrier so engaged in the transportation of property to Chicago aforesaid, or is the owner of a railroad operated and used under some contract or agreement by said other defendants in such transportation of property to Chicago, or in connection with their several lines; and that said defendants, and each of them, are subject to the provisions of the act of Congress entitled "An act to regulate commerce," approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

III. That the said Union Stock Yards and Transit Company now owns and for many years has owned yards, pens, and chutes, and railway approaches thereto in the City of Chicago, which have been and are used generally by railway lines leading to that city as a common or union depot or station for that city for the reception and delivery of live stock and the shipment and forwarding of that class of railway traffic. That the long-standing and still prevailing custom of defendants and other carriers of continuously so using the said stock yards as the depot or station in Chicago, where the necessary facilities for loading and unloading and caring for live stock required by law to be furnished by common carriers are provided, has become universally well known, and it has been constantly held out by defendants and other common carriers that their live-stock depot or station at Chicago was and is the Union Stock Yards in that city, so that live stock shipped to Chicago, and merely so billed over any railway line, has been and is certain to be delivered at such depot or station in Chicago without any instruction from shippers or statement on the railway billing whatsoever.

That for the purpose of acquiring a monopoly of the stock-yards business at Chicago, and having all the live stock shipped to or through Chicago pass through its yards, the defendant, the Union Stock Yards and Transit Company, did, as complainant is informed and believes, buy out, absorb, or consolidate with other existing stock-yard corporations or firms at Chicago; and most if not all the railway carriers to and from Chicago, including those named herein, did, as complainant is further informed and believes, encourage and promote said arrangement for a common or union live-stock depot, chiefly that they might severally be relieved of much of the expense and all of the inconvenience of maintaining separate live-stock depots in that city. That for many years the said Union Stock Yards and Transit Company has been in receipt of large revenues derived from fees and other charges for the care and handling of cattle and other live stock at Chicago, and the track connections between its yards and those of railways leading to Chicago, owned by said Union Stock Yards and Transit Company, were, from the

time such common or union live-stock depot was established until on or about June 1, 1894, used for bringing stock to and taking it from the said depot without charge to connecting carriers or to shippers or consignees.

That on or about said 1st day of June, 1894, the defendants operating several lines or routes to Chicago from Texas and other cattle-producing States did arbitrarily advance the rates for the transportation of live stock to Chicago over their said respective lines or routes, including the receiving, forwarding, and delivering thereof, by establishing a so-called terminal or switching charge at Chicago of $2 for each carload, and they since have collected, and do now, unjustly and contrary to their practice of more than twenty-five years, collect the same from shippers or consignees in addition to the rates currently in force and named in their schedules of charges for the transportation of live stock to Chicago; and complainant shows, by way of illustration, that the rate on beef cattle from the Texas Pan Handle (Forth Worth and Denver City stations) to Chicago is $108.35 in cars 36 feet in length, to which is added the so-called terminal or switching charge of $2 per car.

That the rates on live stock in force prior to June 1, 1894, from all points of shipment to Chicago were applied by defendants and other carriers as aggregate charges for receiving, forwarding, and delivering cattle and other live stock destined to that city, and defendants were not at the date aforesaid, and have not been since, subjected to any such changes in transportation conditions, increased cost of operation, or other items of expense as to warrant any increase in aggregate carload rates, and especially the increase which was and is caused by the exaction of said $2-per-
11 car charge ostensibly for terminal or switching service at Chicago.

That the defendants, including the said Union Stock Yards and Transit Company, have not conducted the business of transporting and handling live stock in any essentially different manner, or for the materially greater accommodation or benefit of live-stock shipments since June 1, 1894, than before that date, so as to justify any increase of transportation charge.

That complainant is informed that on or about said 1st day of June, 1894, the defendant, the Union Stock Yards and Transit Company, did enter into an agreement with the various railway lines entering Chicago to the effect that on each loaded car of live stock hauled to and each empty live-stock car hauled from its yards over the tracks of said Union Stock Yards and Transit Company it should charge and receive 40 cents; and the said charge of 80 cents per car both ways is stated to be for the use of said tracks. That complainant is also informed that the other defendants did, upon the making of such trackage charge, establish the so-called terminal or switching charge of $2 per car. That neither said agreement between the Union Stock Yards and Transit Company and said other Chicago railways nor the imposition through other means of such trackage charge by said Union Stock Yards and Transit Company was required by any unusual diminution in the revenues of said Union Stock Yards and Transit Company, but the same was arbitrarily agreed to or made, as complainant believes, for the purpose of exacting an additional charge of $2 per car, much greater than such trackage charge from shippers or consignees of live stock.

That the said charge of $2 per car, while stated as a "terminal charge" in published tariffs of defendants, is in reality an arbitrary increase of published transportation charges on live stock to Chicago for the mutual benefit of the Union Stock Yards and Transit Company and other defendants, and is based upon no increased expense to them or either of them other than is constructively made for the purpose of dividing such charge between the said Union Stock Yards and Transit Company and other defendants.

That the duty of providing facilities for the receipt and delivery of live stock at Chicago without additional charge therefor has been distinctly recognized by the defendant, the Atchison, Topeka and Santa Fe Railway Company, in the provision and maintenance of independent stock yards at Chicago; but complainant is informed and believes and thereupon alleges that said defendants does, nevertheless, continue to make the said Union Stock Yards its main live-stock depot in Chicago, and in divers ways promotes the consigment of stock to such yards; that whatever the practice of said defendant may be in such
12 regard it is a party to the exaction of the excessive and illegal additional charge of $2 per car on stock hauled over its line and delivered at said Union Stock Yards.

IV. That the established aggregate rates and charges of defendants for the transportation over their respective through lines of cattle and other live stock from shipping points in Texas and other Western and Southwestern States to Chicago, including said additional so-called terminal or switching charge of $2 per car, are, to the extent of said $2 per car, unjust and unreasonable in themselves and relatively, as compared with transportation charges on live stock over their several or connecting lines from the various points of shipment to destinations other than Chicago; that said rates to the extent mentioned unjustly discriminate against complainant, its members, and other owners and shippers of live stock, and consignees thereof at Chicago, and subject them and their traffic to undue and unreasonable prejudice and disadvantage in favor of and to the undue and unreasonable preference and advantage of shippers of live stock and their traffic to live-stock markets or destinations other than Chicago, and in favor of consignees at such other markets or destinations; that such rates of defendants are also unjustly discriminating in favor of and to the undue and unreasonable preference and advantage of themselves, in that the said additional and advanced charge of $2 per car was established and is maintained and collected by them without increased service, and without any increase in cost to them in operating through lines to Chicago and delivering stock at said Union Stock Yards, except such fictitious increased cost to the carriers outside of Chicago as may be made to appear by dividing the said $2 increase in charge per car so that 80 cents thereof is apportioned to the defendant, the Union Stock Yards and Transit Company, the remaining $1.20 per car being a net addition to the revenues of other participating defendant carriers; and that the said charge of $2 per car is not a "terminal charge" which, under the provisions of section 6 of said act to regulate commerce, can be separately stated in tariffs as changing, affecting, or determining any part or the aggregate of the defendants' through transportation rates or charges. All of which is in violation of sections 1, 2, 3, and 6 of said act to regulate commerce.

V. That defendants, by exacting said additional charge of $2 per car on live stock consigned to Chicago, further violate sections 1, 2, and 3 of said act, in that said charge is largely in excess of additional so-called terminal charges established and collected by them on packing-house products and other "dead freight" consigned to Chicago.

VI. That the schedules or tariffs of rates and charges estab-
13 lished by the various defendants for the carriage of live stock to Chicago and other live-stock markets reached by various lines or routes over which they engage in transportation, the same being on file in the office of this Commission, are hereby referred to by complainant and made a part hereof.

Wherefore complainant prays that the defendants be severally required to answer the charges herein, and that after due hearing and investigation the said defendants, and each of them, be commanded by this Commission to cease and desist from each and every of the violations of law hereinabove alleged, and also to cease and desist from omitting to charge and receive for the transportation of cattle and other live stock from the points of shipment herein mentioned to Chicago, including receiving, forwarding, and delivering the same, such reasonable, just and lawful aggregate charges as may be found and determined by and upon the evidence and record herein; that said defendants be also ordered to make reparation to members of this complaining association for the exaction by them of said unlawful additional charge of $2 per car, by paying such amounts as overcharges, repayments, or otherwise as may be found justly due upon the proofs to be adduced herein; and that such other and further order or orders be entered in this case as the Commission may deem necessary in the premises.

Dated at Fort Worth, Tex., August 25, 1896.

CATTLE RAISERS' ASSOCIATION OF TEXAS,
By W. V. NEWLIN, *Traffic Manager.*

STATE OF TEXAS, *County of Tarrant, ss.*

W. V. Newlin, being duly sworn, says that he is traffic manager of the complainant in this proceeding, and that the matters set forth in the foregoing petition are true, as he verily believes.

W. V. NEWLIN.

Subscribed and sworn to before me this 25th day of August, 1896.

[SEAL.] N. B. MOORE, *Notary Public.*

14 EXHIBIT B.

Petition of the Chicago Live Stock Exchange in the case of the Cattle Raisers' Association of Texas, complainant, v. The Fort Worth and Denver City Railroad Company et al., defendants.

The petition of the Chicago Live Stock Exchange respectfully shows:

1. That the Chicago Live Stock Exchange is an association of live-stock commission men, raisers, owners, shipper, and slaughterers of live stock; that said live stock owned by them, or the shippers whom they represent, is being constantly shipped over the lines of the defendant railroad from all points in the West and Southwest to the Union Stock

Yards at Chicago, in the State of Illinois; that the defendants named in the petition are common carriers engaged in the railroad transportation of property from points in States west and southwest of Chicago, and are subject to the provisions of the act of Congress entitled "An act to regulate commerce," approved February 4, 1887, and acts amendatory thereof.

2. That the defendants on or about June 1, 1894, did arbitrarily establish a so-called "terminal" or switching charge of $2 on each car of live stock delivered at or forwarded from the Union Stock Yards at Chicago, and since that date they have generally assessed and collected such charge in addition to their published rates to and from Chicago. We respectfully contend that the assessment and collection of said $2 "terminal" or switching charge in addition to their published rates constitutes an unjust discrimination and an undue and unreasonable preference under sections 2 and 3 of the act to regulate commerce, reading as follows:

"SEC. 2. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered or to be rendered in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of discrimination, which is hereby prohibited and declared to be unlawful.

"SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

3. That the relative reasonableness or unreasonableness of any terminal or switching charge in addition to any rate can best be measured by comparison with or by the absence of such a charge at the same or other points where like and contemporaneous service on the same kind of traffic is performed under substantially similar circumstances and conditions. For purposes of comparison we submit:

(a) That no "terminal" or switching charge is collected by the railroads in addition to their rate on shipments on live stock to or from live-stock markets and stock yards at other competitive points.

(b) That the different railroads leading into or from some of the live-stock markets in the territory west and southwest of Chicago are collectively at as great, and in some cases a greater, expense in making deliveries at or receiving their shipments of live stock from the stock yards at said markets, and that, notwithstanding such expense at some of the markets, they have not established, assessed, or collected any "terminal" or switching charge, or in anywise increased their rates to cover the

cost of such service on shipments of live stock to and from the stock yards at such other markets.

(c) That the various lines of railways operating eastwardly out of Chicago handle shipments of live stock out of the Union Stock Yards, Chicago, and although their actual expense for receiving from or delivering live stock at the Union Stock Yards at Chicago is precisely the same as the cost to defendants, nevertheless, they do not assess or collect any so-called "terminal" or initial switching charge in addition to their published rate.

(d) That the arbitrary, unreasonable, inconsistent, and preferential action of some railways centering at Chicago in assessing a switching charge on live stock to and from the Union Stock Yards at Chicago has resulted in a most anomalous and unjust condition of charges on live stock, which can best be shown by citing a few instances. For example, carload shipments of live stock from points west of Chicago into the Union Stock Yards, Chicago, are subjected to a $2 "terminal" charge. If said shipments are sold on this market and the purchaser ships them to points in Illinois, Iowa, or Missouri, another "terminal" or initial switching charge of $2 is added to the rate, whereas if the same shipments were forwarded from the Union Stock Yards, Chicago, to a
16 point in Indiana, Ohio, or Michigan no switching or "terminal" or initial charge would be collected. And further, the Wabash Railroad handles live stock in carloads from points on its line in Illinois, Iowa, and Missouri to the Union Stock Yards, Chicago, and collects a $2 terminal charge in addition to its published rate. The same line handles live stock from Indiana, Ohio, and Michigan to the Union Stock Yards, Chicago, and only charges $1 "terminal" or switching charge in addition to its rate. And again, the same line will assess and collect a $2 terminal on carloads of live stock shipped out of the Union Stock Yards to Illinois, Iowa, and Missouri, while on shipments of live stock out of Indiana, Ohio, and Michigan no additional terminal or switching charge is assessed. The same inconsistency in the application of this "terminal" or switching charge on live stock exists via other lines, and constitutes not only an unjust discrimination against Chicago, but also an undue and unreasonable preference against persons and localities, and in both respects a violation of "the act to regulate commerce."

4. That it has been the long-established usage and custom of Western railroads to absorb at competitive points any initial or terminal switching charge on carload freight; that their published tariff rates, for example, applying between points west and southwest of the Missouri River on dead freight, so called, to points in Chicago on what is known as the Belt Railway, the Chicago and Calumet Terminal Railway, or the St. Charles Air Line, or other belt or switching lines in Chicago, except the Union Stock Yards system, cover the entire cost for delivery of carload freight at any designated point on the lines of said belt railways without additional charge; in other words, the expense of such initial or terminal switching charge, in all instances, other than the terminal expense at the Union Stock Yards, is assumed or absorbed; that there is no essential difference in the service performed, the aggregate average rates, the cost of delivery, or any other pertinent circumstances incidental to the two transactions, which warrant the assessment of a terminal or switching

charge in one case and the absorption of it in the other case; and that their action on shipments of dead freight to and from points on said belt line constitutes a custom which should be observed in all similar cases, and should govern on shipments of live stock to and from the Union Stock Yards, which are now unjustly assessed a "terminal" or switching charge.

5. That through shipments of live stock from Western points to Eastern points moving via Chicago are handled generally by Western lines in precisely the same manner as similar shipments destined to the Union Stock Yards at Chicago; that is to say, the Western lines, for their convenience, haul the cars containing live stock to the Union
17 Stock Yards at Chicago to be there delivered to the Eastern lines, and that the expense to the Western line for such transfer is more than the actual cost of delivering at the Union Stock Yards of a local carload shipment of live stock and that the service is identical; that in case of through shipment they absorb the transfer charge, while in case of a local shipment they add a "terminal" charge of $2.

6. That, for example, the rate on hogs from Missouri River points to Chicago is 5 cents higher than the rate from same points to East St. Louis; and that the rates eastwardly to, say, New York, are uniformly 5 cents higher from East St. Louis than from Chicago, both on live hogs and on their fresh-dressed product. That on shipments of hogs from Missouri River points to Union Stock Yards, Chicago, a $2 "terminal" or switching charge is collected, while on shipments from same points to the National Stock Yards at East St. Louis no similar, kindred, or any charge in addition to the rate is collected. That the assessment of the "terminal" or switching charge on such shipments to Chicago operates unjustly, discriminatorily, and preferentially, in that if shipments subsequently are forwarded to New York as live hogs or the fresh-dressed product the total through charges from Kansas City to New York are in the aggregate $2 higher via Chicago than via East St. Louis, and that this disparity in the total through charges and the consequent discrimination is caused solely by the assessment and collection of a "terminal" or switching charge at Chicago; in other respects the through charges equalize. Similar instances where the assessment of this charge operates discriminatorily and preferentially could be multiplied indefinitely.

7. That this terminal or switching charge was not established on account of any unusual increase in the expense or conditions of delivering at or receiving freight from the Union Stock Yards at Chicago, or any increased cost of operation; nor on account of any improved facilities for the reception and delivery of live stock; and that the defendants have not conducted the business of transporting and handling live stock in any essentially different manner or for the materially greater accommodation or benefit of live-stock shipments since June 1, 1894, than before that date, so as to justify any increase of transportation charges by an added "terminal" or switching charge, and further, that the defendants on shipments of live stock to and from the Union Stock Yards, Chicago, are not subjected to as great an expense as they have arbitrarily added to the through rate in the form of said "terminal" or switching charge.

8. That the average actual cost per ton to the defendant railroad for

handling live stock in and out of the Union Stock Yards, Chicago, is no more than the average actual cost per ton for handling all kinds of freight at the various city depots on team tracks, etc., of said
18 defendants; and that the average rates per ton per mile on the live stock is no less than the average rates per ton per mile on all kinds of freight handled at the various city depots or team tracks; that on the live-stock shipments the defendants assess a "terminal" or switching charge to cover cost of delivery at the Union Stock Yards; no similar charge is collected on shipments handled at the city depots or team tracks, although the expense is no less.

9. That the defendant railways handled live stock to and from the Union Stock Yards at Chicago for many years previous to June 1, 1894, without collecting any additional terminal or switching charge.

10. The tariffs, schedule of rates, etc., of the defendant carriers applying on live stock, in effect on and prior to June 1, 1894, and since that time to and from Chicago and other Western competitive live-stock markets, on file in the office of the Interstate Commerce Commission, are made a part of our plea. That on the assumption the live-stock rates are shown in said tariffs and schedules of rates on file to and from the Union Stock Yards, Chicago, and other competitive Western markets, were on and prior to June 1, 1894, adjusted on an equitable, fair, and reasonable basis, it follows that the assessment and collection of an additional charge on shipments to and from one market did make the aggregate charges to and from such market inequitable, unfair, and unreasonable. That at the time this terminal or switching charge was established there was not any general readjustment of rates to and from any of the competitive Western live-stock markets that would tend in any way to justify the arbitrary increase in the aggregate charges or shipments to and from the Union Stock Yards, Chicago.

11. That the yards, pens, and chutes of the Union Stock Yards Company and railway approaches thereto, in the city of Chicago, have been and are generally, if not universally, used by defendant railways as a common union depot or station for the reception and delivery and shipment and forwarding of live stock; that at these yards necessary and suitable facilities for loading, unloading, and caring for live stock, required by law to be furnished by common carriers, are provided, and an opportunity afforded for the sale and purchase of such live stock, and, in fact, there are present all the adjuncts generally understood to be required and commercially necessary at a large competitive stock yards or live-stock market; that the representations of some of the defendants that the stock yards of their companies are located at other points on their lines in Chicago, and that they will deliver live-stock shipments at said yards of their own free of any switching or terminal expense, is simply the pretense of an excuse for their arbitrary, unjust, and
19 discriminating action in assessing and collecting a so-called terminal or switching charge of $2 per car, and could not be entertained as proper facilities upon any other basis than an erroneous conception of the commercial requirements of a live-stock market; that the alleged stock yards said to be located at other points on their line in Chicago are wholly inadequate for the handling of even a portion of their shipments, and that the aggregate of the alleged stock yards said

to be located at other points on lines of defendants' railways in Chicago are as woefully insufficient to take care of the entire volume of their live-stock traffic of Chicago as are the alleged facilities of any one line to take care of its individual live-stock shipments; and that this inadequacy and insufficiency of the alleged stock-yard facilities at Chicago, said to be furnished by defendants without any additional cost, should of itself be ample evidence that the defendants have not and do not *not* furnish the proper and necessary facilities and accommodations required by law, and further, when considered in connection with the fact that shippers and handlers of live stock have not and do not now use such alleged stock-yard facilities, it should be obvious to all that the pretensions of defendants in this respect are simply a device to secure legal warrant for, or a cloak to hide, the arbitrary, unjust, unreasonable, discriminatory, and preferential charge of $2 per car terminal or switching on live stock when delivered at or received from the Union Stock Yards at Chicago.

12. That the defendant railways should not now be permitted at this late date, after they have for so many years encouraged and promoted shipments to the Union Stock Yards at Chicago, to attempt by a preferential and discriminatory charge to divert live stock to their own stock yards or markets in Chicago, to the undue and unreasonable prejudice and disadvantage of the entire live-stock trade, and all interests of the Union Stock Yards, Chicago.

13. That the decision of the Commission in the case of The Board of Trade of the City of Chicago v. Various Western Lines (see item 506 of printed proceeding of 1895), as follows:

"A business like that involving the preparation for consumption of such a large and leading staple and necessary of life as meat, with all the competition that exists for it in different and competing localities, brought near to each other by the fast rail lines of the country, is too large to be done in a corner, and is a conspicious instance of a commodity that requires at the hands of carriers rates that are not only reasonable and just in themselves, but relatively reasonable and just in their bearing upon these different localities,"

covers in a measure the case in dispute.

Wherefore, the petitioner prays that the defendants may be required to answer the charges herein, and that after due hearing and investigation an order be made commanding the defendant' to cease and desist from assessing and collecting said so-called terminal or switching charge, in violation of the act to regulate commerce, and such other and further order as the Commission may deem necessary in the premises.

THE CHICAGO LIVE-STOCK EXCHANGE,
By T. W. TOMLINSON,
Railway Representative.

STATE OF ILLINOIS, *Cook County, ss:*

T. W. Tomlinson, being duly sworn, says that he is the railway representative of the complainant in this petition and that the matters set forth in the foregoing petition are true as he verily believes.

Subscribed and sworn before me this 27th day of February, 1897.

[SEAL.] CHARLES W. BAKER,
Notary Public.

Exhibit C.

Before the Interstate Commerce Commission.

Cattle Raisers' Association of Texas
v.
Fort Worth & Denver City Railway Company and Others.

[Decided January 20, 1898.]

1. The Chicago Live Stock Exchange, a corporation whose members are persons engaged in the sale of live stock upon commission at Chicago, and the object of which is to promote the interests of its members in the sale of such live stock, may under section 13 of the act to regulate commerce maintain a proceeding to correct an unreasonable freight rate upon live stock from various points to Chicago; and this notwithstanding that certain by-laws and proceedings of the corporation are in violation of that statute of the United States commonly known as the antitrust law.

21 2. The defendant, the Union Stock Yards & Transit Company, having the option under its charter of becoming a common carrier or not, elected to and did become such carrier for dead freight to and from the lines of other carriers in the city of Chicago, but it did not so elect to engage in the carriage of live stock between such lines and its stock yards in Chicago. It imposes a trackage charge on other defendants for the use of its tracks in the transportation of live stock to and from the stock yards, and such transportation is conducted wholly by such other defendants. Held, That the Stock Yards Company is not a common carrier engaged in the transportation of live stock within the meaning of section 1 of the act to regulate commerce, and is therefore not subject to regulation in this proceeding.

3. Defendant common carriers undertake to carry live stock through different States to the Union Stock Yards in Chicago, and until delivery is made at such yards the live stock is interstate commerce and subject to the act to regulate commerce.

4. When carriers forming a through line and dividing the through rate also designate a certain rate for performance of a particular service, and it appears in proof that but one of the carriers is responsible for or interested in the latter charge, it is proper on complaint to deal with that particular carrier and that particular rate, irrespective of the other rates which make up the aggregate charge.

5. Section 2 of the act prohibits unjust discrimination between individuals through charging different rates for like service under substantially similar circumstances and conditions, and does not prevent a railroad company from absorbing a terminal charge on live stock in one market and exacting such a charge for terminal service in another city which is reached by a different line.

6. The imposing by a carrier of a terminal charge at one live-stock market, while it does not impose a similar charge at another competing market, is not necessarily an undue preference under the 3d section of the act.

7. Nor is the imposition at some locality of a terminal charge upon live stock, while no similar charge is imposed upon dead freight, necessarily a discrimination, under the 3d section, against live stock and in favor of dead freight.

8. While the decision of the United States circuit court of appeals upon the same set of facts, but not between the same parties, has not the technical effect of a previous adjudication, it ought to be and is considered in this case conclusive upon the Commission as to the questions involved and decided.

9. Live stock shipped to Chicago is necessarily delivered for marketing at the yards of the Union Stock Yards & Transit Com-
22 pany. In reaching its destination, carloads of live stock pass over the tracks of that company, which connect the various lines of the defendants with its yards. For many years the Union Stock Yards & Transit Company has given the use of its tracks for this purpose, and the defendants have performed the service of moving without charge. Beginning June 1, 1894, the stock yards imposed a trackage charge upon each car moving in or out. Thereupon the various defendants agreed to and did impose and collect a terminal charge of $2 per car for the switching of all cars of live stock to the stock yards, in addition to the regular Chicago rate. Held, that upon the circumstances of this case the defendants might reimburse themselves for the trackage charge imposed by the Union Stock Yards & Transit Company, but that they ought not to exact any compensation for their services which they previously rendered gratuitously, and that the imposition of more than $1 per car as such terminal charge on live stock was in violation of section 1 of the act to regulate commerce.

10. The case is continued upon the question of reparation, for proof of damages by members of the complaining Cattle Raisers' Association, all questions as to such reparation being reserved until such proof is made.

Maclock, Cowen & Burney and W. V. Newlin for complainant.

T. W. Tomlinson for Chicago Live Stock Exchange.

M. A. Spoonts for Ft. Worth & Denver City Ry. Co. and Southern Pacific Company.

Gardiner Lathrop, E. D. Kenna, and Robert Dunlap for A., T. & S. F. Ry. Co. and Gulf, Colorado & S. Fe Ry. Co.

James Hagerman for Missouri, Kansas & Texas Ry. Co.

Robert Mather for C., R. I. & P. Ry. Co.

George R. Peck and C. B. Keeler for the C., M. & St. Paul Ry. Co.

Lloyd W. Bowers for Chicago and North-Western System.

Thomas Wilson for Chicago, St. Paul, Minn. & Omaha Ry. Co.

F. B. Kellogg for Chicago Great Western Ry. Co.

John M. Harlan for Houston, Texas Central Ry. Co. and Southern Pacific Co.

William Brown for Chicago & Alton R. R. Co.

J. W. Blythe, C. M. Dawes, and O. M. Spencer for Chicago, Burlington & Quincy System.

S. F. Andrews for Illinois Central R. R. Co.

George B. Burnett for Wabash R. R. Co.

F. R. Babcock for Union Stock Yards & Transit Company.

PROUTY, Commissioner:

The complaint in this matter alleges: That the complainant is an association composed of the owners and producers of cattle in the States of Texas, Kansas, Montana, North Dakota, South Dakota, and Indian Territory; that its different members are continually engaged in the shipment of cattle and other live stock from various points in the above-mentioned States to Chicago, Ill., over the lines of the defendants, and that this proceeding is broug't by the complainant on behalf of its own members and other persons interested in the shipment of live stock from various points in the above-named States to Chicago.

That the defendants, with the exception of the Union Stock Yards & Transit Company, are common carriers engaged in the interstate transportation of live stock from various points in the above-named States to Chicago under such circumstances as render them subject to the act to regulate commerce.

That the Union Stock Yards & Transit Company now owns and for many years has owned extensive yards and other facilities for the unloading, storing, and marketing of cattle in the city of Chicago, and that these yards have become by the action of the Union Stock Yards & Transit Company and the various railroad companies centering at Chicago, including the defendants, the general depot for the unloading of live stock at Chicago, and that the defendants hold out to the public the said Union Stock Yards as their live-stock depot in that city; that until about June 1st, 1894, the defendants had always transported cars of live stock to the Union Stock Yards without any other charge than the published through rate to Chicago, but that on or about said June 1st, 1894, all the defendants arbitrarily imposed a charge of $2.00 per car upon all carload shipments to the Union Stock Yards over and above the regular published Chicago rate, treating the same as a switching or terminal charge; that the defendants were not put to any additional expense which justified the exaction of said $2.00 per car at that time; that, as the complainant believes, this charge was imposed in pursuance of an agreement entered into between the Union Stock Yards & Transit Company and the various defendants whose railway lines enter the city of Chicago, that the said railway companies should pay to the Union Stock Yards & Transit Company a charge of 40 cents each way for the privilege of using the tracks of the Union Stock Yards & Transit Company, and that the bal-

24 ance of the $2.00 per car should be retained by the railroad companies, although the service rendered by them and the amount expended by them in transporting live stock to the stock yards was, aside from this 80 cents per car, exactly the same after as it had been for many years before said June 1st.

That the charges from the various points named to Chicago are in the aggregate unreasonable to the extent of this $2.00 per car.

That at other live-stock markets like East St. Louis, Kansas City, and Omaha, no such terminal charge is made, and that this, therefore, discriminates against Chicago and in favor of those localities.

That upon dead freight consigned to or taken from the Union Stock Yards the switching charge is absorbed by the defendants, wherefore the

imposition of this charge is a discrimination against live stock as a species of traffic and in favor of dead freight.

The complainants ask that the defendants be ordered to desist from the further making of this charge and that reparation be awarded to the members of the complaining association.

The Chicago Live Stock Exchange filed an intervening petition. In this petition it is alleged that the Chicago Live Stock Exchange is composed of persons who are interested as commission merchants, owners, and raisers of cattle which are continually being shipped to the Union Stock Yards for the purpose of being marketed there. It alleges, at greater length, but in substance, the same violations of the act to regulate commerce as those set forth in the complaint and above stated.

The Union Stock Yards & Transit Company admits that it is the owner of certain yards, pens, and chutes in the city of Chicago designed and used for the loading, unloading, and storing of cattle, and that very large numbers of cattle are so handled at these yards. It also admits that it is the owner of certain railroad tracks which are connected with the tracks of certain of the defendants and over which communication is had to its yards. It denies, however, that it is a common carrier, or that it is in any way subject to the jurisdiction of the Commission in this matter. It says that it imposes a trackage charge for the transportation of cars of live stock over its iron to and from its yards, and affirms that the charge is a just and reasonable one.

The other defendants all admit that they are engaged in the transportation of live stock from different points in the various States named to Chicago, and that they are, in respect of such transportation, subject to the act to regulate commerce.

All the defendants, except those whose lines of railway enter the city of Chicago, deny that they have anything to do with the maintenance of this terminal charge. They assert that they receive no portion of the same in the division of the through rate, that the charge is imposed by the defendants whose lines enter the city of Chicago as a purely local charge, of their own motion and exclusively for their own benefit; and they insist, therefore, that they have no interest in the disposition of this question.

The defendants whose lines of railway enter the city of Chicago are the Atchison, Topeka & Santa Fe; the Chicago Great Western; the Chicago, Rock Island & Pacific; the Chicago & Northwestern; the Chicago, Burlington & Quincy; the Wabash; the Illinois Central; the Chicago, Milwaukee & St. Paul, and the Chicago & Alton. These defendants have all filed separate answers, but these answers come, in the main, to the same propositions.

They all concur in admitting that the Union Stock Yards have been for a long time and are at the present time the live-stock market of the city of Chicago, to which the greater part of the live stock consigned to Chicago goes for disposition; that in one way and another their lines of railway connect either directly or indirectly with the railway of the Union Stock Yards & Transit Company, and that they have for a long time been accustomed to and do still transport carloads of live stock over the iron of that company to the stock yards; that previous to June 1st, 1894, they had been accustomed to render this service without exacting any

charge in addition to the regular Chicago rate. They say that previous to this time the Union Stock Yards & Transit Company, for the purpose of attracting live stock to its yards, had given all the defendants the free use of the tracks of that company for the transportation of live stock, and that the various defendants had performed the service of transportation; but that the Union Stock Yards & Transit Company a short time before June 1st, 1894, notified the defendants that after that date a charge in some instances of 40 cents each way, and, in other instances, of 75 cents each way, would be imposed as a trackage charge upon each carload of live stock which went in and out of the Union Stock Yards over the iron of the Union Stock Yards & Transit Company; that the rates for the transportation of live stock from the various points named to Chicago had become and were at that time excessively low; that although they had previously rendered this service for nothing they did not feel they could continue to do so, and that accordingly they had agreed to impose a uniform switching charge of $2.00 per car upon all live stock
26 taken to the stock yards in addition to the regular Chicago rate; that what would remain to the defendants after the payment to the Union Stock Yards & Transit Company of the trackage charge would be much less than the actual expense of moving the cars from the tracks of the defendants to the stock yards, and that the charge was a legal and reasonable one. They further averred that, acting upon this determination, the various defendants had properly published and filed with the Interstate Commerce Commission schedules of rates on live stock showing this additional charge, and the public was thereby fully informed of the fact that it would be made.

The defendants all deny that this charge discriminates against Chicago in favor of other live-stock markets, and also that it discriminates against live stock in favor of dead freight.

All the defendants except the Chicago & Alton Railroad Company deny that they have ever held out the stock yards as their live-stock depot in Chicago, or that they have ever made the same their live-stock depot at that point, or that they would deliver freight billed simply to Chicago at the stock yards, and they state that they only deliver it at the stock yards upon the request either of the consignor or the consignee. The Chicago & Alton Railroad Company asserts that the public very well understands that the live stock shipped to Chicago must be delivered in the ordinary course of business at the Union Stock Yards, and that it so delivers it unless otherwise directed.

The Atchison, Topeka & Santa Fé Railway Company made answer that from 1893 until 1896 that property was in the hands of receivers; that immediately after this terminal charge was imposed application was made to the circuit court for the northern district of Illinois, that being the court having the receivership in charge, asking that the receivers be instructed not to impose this charge for the reason that the same was an unlawful one, but that it was finally determined by the court of last resort in that proceeding that the charge was lawful and might be properly imposed.

The defendants filed a motion to dismiss the intervening petition of the Chicago Live Stock Exchange, for the reasons, first, that said Chicago Live Stock Exchange was a corporation of limited powers and had

no standing to maintain its cross petition; second, that said Chicago Live Stock Exchange was, as to the matters pending in this controversy, engaged in an unlawful combination or conspiracy in restraint of trade and did not come, in respect of those matters, into this controversy with clean hands; third, because the Chicago Live Stock Exchange was not such a person as was contemplated in the 13th section of the act to regulate commerce.

27 Decision upon this motion to dismiss was reserved until the final disposition of the case, and the intervener was fully heard both upon the proofs and in argument.

The material facts upon which the case is to be disposed of are as follows:

1. The Cattle Raisers' Association of Texas is a voluntary association composed of persons interested in the growing of cattle for market. Its members come from Texas, New Mexico, Indian Territory, and Kansas, and they represent the ownership at the present time of about two and one-half million head of cattle. The association has been in existence for about twenty years, maintains a regular organization, holds regular meetings, and issues an annual report. One of its purposes is the obtaining of fair and reasonable freight rates.

2. The Chicago Live Stock Exchange is a corporation organized under the laws of the State of Illinois. Section 2 of the articles of incorporation sets forth the purposes of the organization as follows:

"The object for which it is formed is to establish and maintain a commercial exchange; to promote uniformity in the customs and usages of merchants; to provide for the speedy adjustment of all business disputes between its members; to facilitate the receiving and distributing of live stock as well as to provide for and maintain a rigid inspection thereof, thereby guarding against the sale or use of unsound or unhealthy meats; and, generally, to secure to its members the benefits of cooperation in the furtherance of their legitimate pursuits."

The affairs of the exchange are managed by a board of nine directors. Any person having the necessary business qualifications may become a member upon receiving the affirmative vote of seven out of the nine directors, and upon the payment of $1,500 in money. Upon becoming a member he is entitled to receive a certificate of membership and this certificate may be sold and transferred. Members not complying with the rules of the association may be expelled.

One of the objects in forming the exchange was to provide uniform rates for the handling of cattle upon commission. Rule 9 refers to this subject and sections 2, 3, 4, and 5 of that rule provide, in terms, what these rates shall be in all cases. Section 7 provides, among other things, that no solicitor shall be employed who is not a member of the exchange, and that not more than three traveling solicitors for each firm shall be employed in the States of Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, and Minnesota.

28 Section 8 provides that if any member of the exchange or any firm in which he may be a partner violates any of the provisions of rule 9 he shall be fined not less than $250 nor more than $1,000 for the first offense, not less than $500 nor more than $1,000 for the second offense, and that for the third offense he shall be expelled from the membership of the exchange.

Section 15 reads as follows:

"No member of this exchange shall buy, or cause to be bought, any live stock at the Union Stock Yards, of Chicago, Ill., from any agent, individual, firm, incorporated or other stock commission company who are or may be regularly selling live stock for nonresidents on commission unless all resident members constituting such firms and all resident stockholders constituting such corporations or other stock companies are members in good standing in this exchange; provided, however, that nothing herein contained shall be construed as in any manner prohibiting any party from selling his own live stock on the market at said stock yards, or any member of this exchange from buying said live stock from such owner."

The testimony shows that the Live Stock Exchange was organized in 1884; that previous to that time commission rates at the stock yards had been very irregular, but had averaged about the same as those fixed by rule 9; that since the formation of the exchange and the adoption of this rule those rates had been uniform and stable; that practically all persons selling live stock at the stock yards were members of the exchange, and that while one not a member might legally engage in such business, he would find it, in fact, impossible to do so successfully.

3. The Union Stock Yards & Transit Company is a corporation organized in 1865 under a charter granted by the legislature of the State of Illinois for that year. Under its charter it was given the right to construct pens, chutes, buildings, and, in general, whatever facilities might be necessary to provide for the unloading, storing, and marketing of live stock. It was given the further right to construct tracks connecting these facilities with the different lines of railway entering Chicago, and it was provided that when these tracks were constructed the Stock Yards Company might either engage in the business of transporting stock and other freight over these tracks on its own account or might lease that privilege upon such terms as it should deem best.

The original capital stock was $1,000,000. At first the company constructed a hotel, built yards and chutes, and laid from these yards lines of track leading to a connection with each one of the different railroads which then entered the city of Chicago. The entire business of
29 the company from 1865 to 1878 was the providing of these facilities for unloading, storing, and marketing live stock.

In 1878 the packing houses were built, not upon the land of the Union Stock Yards & Transit Company, but near by; and since then a considerable part of the live stock bought and sold upon the Chicago market has been slaughtered at the stock yards, and this has led to the springing up of a great number of allied industries. The freight to and from these industries passes over the tracks of the Union Stock Yards & Transit Company.

The capital stock of that company has been increased from time to time until it is now $13,000,000. The vice-president and manager of the company, who has been identified with it since 1867, testified that both the original capital stock and all this increase had been actually paid in in money and actually used up in constructing and improving the property of the company. The Union Stock Yards & Transit Company owns at the present time, besides its pens, chutes, and various build-

ings in connection with the stock yards, about 240 miles of railroad, which is entirely situated in the State of Illinois. It neither makes nor publishes any joint tariff, but confines its operations entirely to the moving of cars to and from the stock yards and the industries which have sprung up around the stock yards.

The important fact in connection with this case is that at the present time the stock yards are the only live-stock market in Chicago. Cattle shipped to Chicago for the purpose of being sold upon the Chicago market must go to the stock yards and can only be got there by passing over the tracks of that company in the same way that the various shipments involved in this suit reach there. This fact was conceded by all parties and is perfectly well understood, both by the defendant carriers and by the public.

4. Before the organization of the Union Stock Yards & Transit Company there were four different points in the city of Chicago at which live stock was delivered and marketed. The different railroads transporting such freight to Chicago were accustomed to deliver it at any one of these four points as directed, without imposing any charge in addition to the regular Chicago rate. This was found burdensome and inconvenient by the railroads and the organization of the Stock Yards Company had its origin in the purpose of consolidating and concentrating these different markets at one point. All the capital stock of the original company with the exception of $25,000 was owned by the various railroads centering at Chicago, and all the railroads which then entered that city and participated in the transportation of live stock were in a greater or less degree subscribers to this capital stock. Of the present defendants, the Chicago, Burlington & Quincy, the Chicago & Northwestern, the Chicago, Rock Island & Pacific, the Chicago & Alton, and the Illinois Central were stockholders, having in all $375,000 of the stock. The other defendants who are now interested in this terminal charge did not at that time enter the city of Chicago. As they have from time to time reached that city they have obtained, either directly or indirectly, a connection with the tracks of the Union Stock Yards and have used those tracks in the same manner and upon the same conditions as have those companies which were originally stockholders.

As above stated, the original purpose in creating the company was to make a common live-stock depot and market, and the understanding was that the Stock Yards Company should connect the yards which it built with the lines of railroad of the several stockholders, that the different railroad companies should have the right to use these tracks without the payment of any trackage charge and should be to the expense of transporting over those tracks live stock to the stock yards; the profit of the stock yards was to be found in the charges which they received for the unloading and subsequent storing of the live stock.

Between 1870 and 1878 the various railroad companies disposed of their stock holdings in the Union Stock Yards & Transit Company. These sales were not made to any particular individual, but were promiscuous sales as opportunity offered at the fair market price. While, however, the railroads had in the main disposed of their stock, they were invited to continue in the board of directors, and representatives of the

different railroad companies did in fact constitute a majority of that board down to June 1, 1894, or thereabouts.

It has been said that the Union Stock Yards & Transit Company made no charge for the use of its tracks in setting in cars of live stock and the taking out of empty cars, and that this was by virtue of an understanding between the company and the various railroad companies. The building of the packing houses in 1878 furnished large quantities of dead freight, both in and out, over the tracks of the Stock Yards Company, and for moving the cars containing this freight that company imposed from the first a wheelage charge of 40 cents per car each way. From 1878 down to June, 1893, the railroad did the work of moving these cars in and out over the tracks of the Stock Yards Company. At first each carrier moved its own cars, but soon an arrangement was made by which certain engines and a certain gang were employed in this work, the different carriers paying the actual expense in proportion to the number of cars moved. In 1893 it seemed best on all accounts that
31 the Stock Yards & Transit Company should undertake to move these cars in and out over its tracks, and an arrangement was made by which the various railroad companies were to pay the Stock Yards & Transit Company for this service upon the basis of what it had actually cost the railroads themselves. This was found to be about 80 cents a car each way, which, added to the trackage charge of 40 cents a car each way, makes $2.40 per car in all, and at the present time the defendants pay the Union Stock Yards & Transit Company $2.40 for every car of dead freight which is handled in and out of the stock yards. This applies to all the defendants, except the Northwestern and the Chicago, Burlington & Quincy, which pay $3.10 per car, the distance being greater in the case of those companies.

Previous to June 1, 1894, extensive improvements had been made at the stock yards and that company professed to think it necessary, in order to obtain some return upon the investment called for by these improvements, to impose a trackage charge in case of live stock. When that determination was announced the representatives of the various railroads upon the board of directors of the Union Stock Yards & Transit Company resigned and have since then had no voice in the management of that company. The trackage charge has been imposed since June 1, 1894. That charge varies in the case of different companies, being in some cases 40 cents per car each way and in other cases 75 cents per car each way. It does not appear that there was ever any legal obligation upon the part of the Union Stock Yards & Transit Company to permit the transportation of live stock over its tracks free of charge.

5. Upon receiving notice of the purpose upon the part of the Union Stock Yards & Transit Company to impose these trackage charges those of the defendants whose lines enter Chicago determined to make a uniform charge of $2.00 per car for the delivery of all cars at the stock yards. In accordance with this determination that rate was incorporated in the tariff to take effect June 1st, 1894. It is treated as a terminal or switching charge and is imposed in addition to the regular Chicago through rate. It has been collected since June 1st, 1894, with the exception of a short time. Only those defendants whose lines enter Chicago receive any part of this charge, and they alone have to do with imposing and collecting it.

Some of the carriers profess to give the shipper the option of sending his stock to Chicago or to the stock yards, and claim that they do not deliver at the stock yards unless so directed. When the stock is
32 billed in Texas the carrier inquires of the shipper whether he desires that delivery be made at Chicago or at the Union Stock Yards, and he is then informed that in case of delivery at the stock yards this additional charge will be imposed. Other carriers make no mention of this, relying upon the published tariff, but inasmuch as the shipment is usually consigned to some commission merchant whose place of business is at the stock yards, delivery is made there without further directions. If the option is nominally given the shipper, it does not leave him any real choice. If his stock is to be marketed at Chicago, it must go to the stock yards, and can only go in this manner, as both he and the carrier perfectly understand.

The defendants justify the imposition of this additional terminal charge after June 1st, 1894, while no similar charge had been made before, upon the ground that then for the first time the Union Stock Yards & Transit Company exacted compensation for the use of its tracks. The sum exacted, however, was in case of no carrier more than $1.50 and in case of a majority only 80 cents. The making of a greater charge than was demanded from them by the Stock Yards Company in any case is sought to be justified upon the further ground that rates upon live stock had become exceedingly low, so that the carrier could no longer render for nothing this service which it had previously rendered gratuitously. It is true that the rates in June, 1894, were materially lower than they were twenty years before. It is also true that the facilities afforded by the carriers for the reduced rate were much better than they were twenty years before, there having been great improvement in the matter of cars and the time having been shortened so that stock arrived in market in much better condition. Both the reduction in rate, however, and the improvement in facilities had been gradual, and it does not appear that there had been any very marked reduction or improvement in the few years immediately preceding June 1st, 1894.

Some attempt was made on the hearing to show that the present rate was unreasonably low, and some attempt was made on the other hand to show that it was unreasonably high. Nothing was developed on either side, however, which warrants a finding of fact, nor do we understand that either party seriously makes any claim that the Chicago rate is unreasonable, either as being too high or too low. It should be observed that since the filing of this complaint the rates from points in Texas and Indian Territory have been reduced 5 cents per hundred, which amounts to from $10 to $15 per car. This reduction was made about October 1, 1896.

6. It has already been indicated that the different defendants make connection with the tracks of the Union Stock Yards &
33 Transit Company at various points and in various ways, so that the actual expense to the several defendants of transporting a car load of live stock from their own iron to the stock yards varies in different cases.

The intervener conceded upon the trial and the complainants did not seriously question that the amount of this charge was reasonable if, under

the circumstances, the charge should be imposed. Before the close of the testimony the several defendants were requested by the Commission to furnish statements showing the actual or estimated expense to them in each case of making delivery from their several tracks to the Union Stock Yards. Such statements have been filed and they make the following showing:

Illinois Central Railroad:		
Via 75-cent trackage route	$2.23	
Via 40-cent trackage route	1.65	
Average		$1.94
Chicago, Burlington & Quincy Railroad		2.25
Chicago & Alton Railroad		2.05
Chicago, Milwaukee & St. Paul Railway:		
Via one route	2.67	
Via other route	2.25	
Average		2.46
Atchison, Topeka & Santa Fe Railway		2.28
Chicago Great Western Railway:		
(Average of 10 cars to train)		2.20
Chicago & North-Western Railway		3.34
Wabash Railroad		1.86
Chicago, Rock Island & Pacific Railway		1.65
Total via nine lines		20.03
Average		2.22

In some instances the foregoing figures are based upon the actual cost of operations for a year or longer, while in other cases they are estimates. There does not seem to be much difference between the actual result and the estimate, having reference to the service performed. Several things should be borne in mind in reference to these figures. In all cases the unloading charge paid by the defendants to the Union Stock Yards & Transit Company of 25 cents per car is included. All the defendants apparently maintain offices at the Union Stock Yards, and in most if not all cases the expense of these offices or agencies is included. In every case not only is the trackage paid the Union Stock Yards & Transit Company embraced, but also whatever trackage charge, if any, a
34 particular railroad company is obliged to pay some other company for the purpose of reaching the tracks of the Union Stock Yards & Transit Company. For instance, the Chicago Great Western Railway Company includes a charge of 75 cents for trackage over the tracks of the Chicago Central; the Chicago, Burlington & Quincy includes a trackage charge of 35 cents over the Pan Handle; the Chicago, Milwaukee & St. Paul includes a trackage charge of 65 cents in one case and 37½ cents in the other case which it pays in reaching the iron of the stock yards; the Atchison, Topeka & Santa Fe uses the tracks of the Chicago and Grand Trunk, for which it pays about 65 cents per car. These trackage charges paid to other parties than the Union Stock Yards & Transit Company are in all cases actually paid and are in all cases necessary to reach the stock yards. They were, of course, paid and absorbed prior to June, 1894.

The Chicago & Alton Railroad connects with the tracks of the Union Stock Yards & Transit Company about ¾ of a mile from Brighton Park, and the difference from the point of connection to the stock yards is about 3 miles. Brighton Park appears to be the station at which the Chicago & Alton would discharge a carload of live stock billed to Chicago, but not intended for the stock yards. The distance, therefore, from the point at which that company would discharge live stock to the stock yards is about 3¾ miles.

The Atchison, Topeka & Santa Fe Railway Company has limited stock yards at Corwith, a station in the suburbs of Chicago, and it alleges and the testimony shows that this is the point at which that company would deliver stock billed to Chicago but not intended for the stock yards. Carloads of stock destined for the Union Stock Yards leave the main line at Corwith, and the distance from there to the stock yards appears to be between 6 and 7 miles. It will be seen, therefore, that the distance from the lines of the various defendants to the stock yards varies from 2 up to 8 or 9 miles. It would also appear that the cost of moving live stock from the main line to the stock yards varied according to the route over which the same was transported as well as in proportion to the distance. Again, it makes a material difference whether this stock is taken in by large or small train loads, the expense of taking in a train of twenty cars being substantially the same as that of taking in one of five cars. It is therefore extremely difficult to estimate the actual cost of movement in addition to the trackage and unloading charges. Taking the estimates and the results of operation together, it seems probable that this varies from about 50 cents a car to 75 cents. In the case of the Chicago & North-Western Company it appears to be considerably more than this, and the figures given by that company are based upon actual operation.

If the charge for this terminal service is to be regulated by what is ordinarily charged for switching the present charge is a reasonable one. The testimony showed that it seldom happened that a lower switching charge than $2.00 was made, and that this amount was often exceeded.

7. The complainants insisted that the defendants ought to bear this expense, for the reason that it was their duty to furnish in the city of Chicago proper terminal facilities for the unloading of live stock; that they had made the stock yards their depot; that they should, therefore, be to the expense of transporting stock to this depot, and that, in point of fact, there was no way in which they could provide the necessary facilities for the handling of this stock at Chicago as cheaply as they could bear the burden of this switching service, including the trackage charge imposed by the Union Stock Yards and Transit Company.

None of the defendants seriously claim that they now have facilities for unloading and delivering at points upon their own lines live stock transported by them to the city of Chicago. Whether they could do so, and, if so, at what cost, was somewhat gone into in the testimony. Some of the defendants appear to have land upon which yards might be erected. Some of them have taken steps looking to the providing of other facilities. Such facilities could be provided by some much more cheaply than by others. The vice-president and manager of the Union Stock Yards and Transit Company testified that in his judgment the railroads made

delivery of live stock in the present manner as cheaply as they could provide terminals at which to handle it.

It would certainly cost the defendants a very material amount to make delivery at their own depots, but how much can not be definitely found from the testimony in this case, nor do we think that question could be satisfactorily answered by any testimony. It has already appeared that if such facilities were provided there would be no use for them, since delivery must be made at the stock yards.

8. The complainants allege that no such charge is made at other stock markets in the west, and that this is an unlawful discrimination against Chicago as such a market.

The principal stock markets west of Chicago are at East St. Louis, Kansas City, Omaha, and, perhaps, Sioux City. At all these points the business of marketing and slaughtering stock seems to go on in
36 much the same way as at Chicago. In each case there is a stock-yards company which owns the necessary facilities for unloading and storing stock preparatory to marketing the same. In every case these stock-yards companies own the tracks connecting their yards with the various railroads. The matter of charges varies with each place. The stock-yards company at Omaha apparently imposes a terminal charge of $1.00 upon live stock and $2.00 upon dead freight. At Sioux City a terminal of $1.00 is imposed upon live stock. These charges cover the movement of the car over the tracks of the stock yards, and the unloading. At East St. Louis and Kansas City there seems to be a charge of 50 cents per car for unloading the stock, but it would appear that no trackage charge is made by the stock yards at these points, and that the carriers move their own cars.

Whatever charge is made is in all cases absorbed by the carrier, for in no instance except at Chicago is a terminal of this sort imposed upon live stock. The reasons for this do not very clearly appear. The testimony showed that some time ago an attempt was made to impose a uniform terminal charge of $2.00 per car upon live stock going to the stock yards at Omaha, and that such a terminal was collected for a short time, but that the Missouri Pacific, and perhaps some other roads entering Omaha, declined for business reasons to maintain this charge, and that the other carriers were thereby forced to discontinue it.

It did not appear that an attempt had ever been made to impose a terminal charge upon live stock at either of the other points named, the general reason assigned being that competition rendered it impossible.

It is manifest that all lines operating from the same territory must impose the same charge, if any, at a given point, since if one line did impose the charge and a rival road did not, the latter line would obtain the business to the exclusion of the former.

Of course, the imposition of this charge must be, to that extent, prejudicial to Chicago. For many years the relative rates from points in Texas and other territory covered by this complaint, to Omaha, Kansas City, East St. Louis, and Chicago have differed by the same differential. The exaction of this terminal makes the rate to Chicago, of necessity, just $2.00 per car higher, and to just that extent it disturbs the previous relation in rates to the disadvantage of Chicago. The complainants, especially the interveners, insist that this discrimination has produced

actual results in the falling off of receipts of live stock at Chicago. The receipts of Texas cattle at Chicago, beginning in 1890, have been as follows:

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1890	657,053
1891	689,187
1892	717,153
1893	607,099
1894	384,469
1895	359,643
1896	323,422

One witness for the Chicago Live Stock Exchange, who was a member of that exchange, was of the opinion that this falling off had been due, not to a large, but to an appreciable extent, to the imposition of this terminal charge, which had not only actually increased the expense of shipping live stock to Chicago as against other markets, but had created an unfavorable prejudice against that market in the minds of shippers. Upon the other hand, one of the complainants, himself a large shipper from Texas, testified that Chicago had been about as good a market since the switching charge was imposed as before. Certainly the imposition of this charge must work against Chicago by just the amount of the charge. It is quite probable that the imposition of this charge at Chicago and nowhere else might injure that market over and above the actual increase in the rate thereby occasioned, but we can hardly find from this testimony that any appreciable result of this kind can be traced directly to this cause.

The defendants introduced the following statement, showing the receipts of carloads of live stock at Chicago, Omaha, Kansas City, St. Louis, and Sioux City for the years 1887 to 1896 inclusive:

Year.	Chicago U. S. Yards.	So. Omaha U. S. Yards.	Kansas City Stock Yards.	St. Louis Nat'l Stock Yards.	Sioux City Stock Yds.
1887	212,288	27,423	67,752	29,838	1,223
1888	210,807	30,492	74,666	30,150	8,530
1889	265,136	42,721	83,972	29,226	13,514
1890	311,557	54,283	108,160	35,325	16,658
1891	304,706	47,754	91,456	36,613	11,312
1892	309,901	58,644	97,462	36,227	11,290
1893	273,932	59,129	99,755	37,279	10,108
1894	287,052	61,784	107,494	40,057	11,237
1895	270,816	40,147	103,368	44,260	8,207
1896	277,437	44,758	113,594	55,695	8,275

The correctness of these figures was not denied, and from them the defendants argued that there had been no undue falling off of receipts at Chicago as compared with other markets since the making of this terminal charge. They insisted, moreover, that if Chicago was unfavorably regarded as a stock market and was losing its prestige and patronage in that respect, this was due, not to the imposition of this switching

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charge nor to the attitude of the railroads, but rather to the practices and extortions of the Chicago Live Stock Exchange, being the intervener in this suit, and the Union Stock Yards & Transit Company.

While the freight rates had materially declined, the commissions established and exacted under the rules of the Chicago Live Stock Exchange for the selling of live stock were the same at the date of the hearing that

they had been for many years before. The stock yards charged for the fodder upon which stock was fed at the rate of $30 per ton for tame hay, $20 per ton for prairie hay, and $1 per bushel for corn, prices which were in each case several times the actual value of these commodities and the same as had been originally charged in 1865.

It did not clearly appear how these charges, either of the commission men or of the stock yards, compared with similar charges at other points, although there was some general testimony to the effect that they were about the same.

9. The complainants, especially the interveners, strenuously insisted that the imposition of this terminal charge upon live stock while no similar terminal was imposed upon dead freight was a discrimination against live stock in favor of dead freight.

It has already been stated that the various defendants pay the Union Stock Yards & Transit Company $2.40 per car for handling cars of dead freight from a connection with their tracks. In case of two of the defendants this charge is $3.10 per car. The testimony did not very clearly show to what extent this charge was absorbed. The general manager of the Chicago & Alton testified that in the case of his company a terminal charge of $2.00 per car was imposed and collected upon dead freight as well as upon live stock. The traffic manager of the Illinois Central testified that his company imposed and collected this charge except upon freight from and to certain sections, that the rule was to impose and collect it, but that competition sometimes compelled them to absorb it. This seems to be the actual state of the matter. The various roads professedly impose a terminal of $2.00 upon dead freight, but there are many instances when that terminal, owing to competitive conditions, is not, in point of fact, imposed and collected.

It also appeared that in the case of live stock the terminal charge was only $1.00 when it came from certain sections. The Wabash Road, for instance, imposes a terminal charge of $2.00 upon live stock coming from points involved in this case, but only $1.00 upon live stock coming from the East. The testimony in behalf of that defendant showed that this was due to the action of Eastern lines in refusing to impose the greater charge.

39 10. Some of the defendants set up the fact by way of answer and showed upon the trial in proof that the question of the legality of this terminal charge had already been passed upon by the Federal court of last resort, and claimed that it was, therefore, res judicata.

In 1894, when the charge was first put in effect, the Atchison, Topeka & Santa Fe Railway was being operated by receivers under the direction of the circuit court for the northern district of Illinois. One Keenan made shipment of several carloads of cattle from Kansas City to Chicago. These cars were simply billed to Chicago and the freight was prepaid upon them at the tariff rate. The railway company transported the cars to the stock yards, that being Keenan's place of business, demanded this charge of $2.00 per car, and refused to make delivery until the same was paid. Thereupon Keenan filed a petition in the receivership suit, asking the court to order the receivers to deliver up this stock without the payment of this terminal charge. In that suit certain other parties, members of the Chicago Live Stock Exchange, who were continually receiving ship-

ments of this kind and being compelled to pay this terminal charge, intervened and asked the court to declare the charge illegal and direct the receivers to desist from imposing the same. The circuit court held that the charge was illegal, but upon appeal by the receivers the circuit court of appeals reversed that decision and held that the charge was a legal one. A writ of certiorari was asked from the Supreme Court of the United States to correct this judgment of the circuit court of appeals, and was refused.

This case in the circuit court was entitled Union Trust Co. of New York v. Atchison, T. & S. F. R. Co.; Keenan v. Atchison, T. & S. F. R. Co., 64 Fed. Rep., 992. In the circuit court of appeals the case was entitled Walker v. Keenan, 73 Fed. Rep., 755. These two reports of the case are referred to as showing the precise questions raised and decided.

Before discussing the main issues presented by these facts, two preliminary motions are to be disposed of.

The defendants move to dismiss the petition of the Chicago Live Stock Exchange and they apparently base this motion upon two grounds: First, that the prosecution of a suit of this kind is not contemplated by the articles of incorporation and therefore not within the capacity of the corporation, and, second, that the complainant itself is engaged in illegal practices in connection with the handling of this live stock at Chicago, and does not, therefore, come into court with clean hands.

Looking to the purposes of the corporation, as set forth in the act of incorporation, it can be fairly said that the scope of it all is to promote the marketing of live stock at Chicago in the interest of the members of that corporation. One of the vital essentials to providing a proper market for such live stock, and to fostering the business interests of the incorporators as commission merchants engaged in the sale of live stock, must be the securing of reasonable freight rates upon that kind of merchandise to Chicago; indeed, without this there could be no market at Chicago. We think, therefore, that this corporation is the kind of body which is contemplated in the 13th section of the act. As a corporation it has no direct pecuniary interest in the freight rate or in the imposition of this particular charge, but its members, for whose general benefit and protection it was formed, have a vital interest in this respect. The first ground of objection taken by the defendants is not, therefore, sustained.

The second ground of objection is that the Live Stock Exchange, being itself in violation of law, does not come into court with clean hands, and can not, therefore, be heard.

The evidence seems to show that one of the objects of this organization was to promote uniformity in commission rates and to confine the commission business at the Chicago stock yards exclusively to members of the exchange. For this purpose one of the by-laws fixes the rate of commission upon the sale of different kinds of live stock. The by-laws further provide that if these rates are not adhered to various penalties shall be imposed, and that for continued violations a member shall be expelled. They further provide that members shall have no business dealings with those who are not members of the exchange. The practical effect of all this is that, whereas, before the organization of the association, commission rates varied at the stock yards, since that time they have been uniformly

maintained at those fixed by the by-laws, and the further result is that only members of the exchange do, or, as a matter of fact, can, engage in the live-stock commission business at the stock yards. The defendants say that this is a palpable violation of the antitrust law, and insist that this exchange shall not be permitted to invoke the law for the purpose of getting this live stock to Chicago in order that the members may work their unlawful practices upon it when there.

There is much force in this contention, but we are unable to assent to it, in view especially of the great latitude allowed in the matter of parties *to proceedings of this kind by the terms of the act.* Assuming that the members of the Live Stock Exchange are individually subject to a penalty, and that they might be enjoined from continuing their organization in this respect, does it follow that the corporation may not maintain this intervening petition? Some of the objects of the organization
41 are certainly lawful and commendable. Indeed, it may be questioned whether anything contained in the act of incorporation indicates an unlawful purpose. Whatever illegality may be connected with the institution is in the working out of those purposes. Now, the fact that a corporation or an individual may be engaged in an unlawful thing is no reason why that corporation or individual may not maintain a suit for the purpose of enforcing or securing a lawful right. These defendants, for instance, have apparently agreed to impose and maintain this terminal charge, and that agreement, if in fact made, is perhaps in violation of the same antitrust law which they here invoke against the Chicago Live Stock Exchange. But is the fact that the defendants are in violation of some other statute of the United States in the maintaining of a particular rate a reason for holding that they may not set up in this proceeding that the same rate is not in violation of the act to regulate commerce?

This motion to dismiss is overruled.

The Union Stock Yards & Transit Company alleges that, in respect of the matters involved in this proceeding, it is not a common carrier subject to the jurisdiction of the act to regulate commerce, and moves to be dismissed.

That company is a corporation under the laws of the State of Illinois. By the act of incorporation it is authorized to construct stock yards, connect those yards with the various lines of railway entering the city of Chicago, and to either lease such connecting tracks for the purpose of the transportation of live stock and other freight between the various lines of railway and the stock yards, or to so transport live stock and other freight over such connecting lines itself. In accordance with this act of incorporation the company has constructed its stock yards and its lines of railway connecting the tracks of the various defendants with those of the stock yards. It may by virtue of its corporate power either lease these connecting tracks or furnish the motive power and conduct the transportation of various kinds of freight over these tracks to and from the stock yards. Originally it leased the right in all cases, receiving in the case of dead freight a trackage charge and imposing in the case of live stock no charge whatever. Subsequently it elected to transport the dead freight itself, and at the present time it does furnish its own motive power and its own crews and haul dead freight from the various

lines of the defendants to the stock yards and back. With reference to this freight, it is undoubtedly a common carrier. In respect to live stock, however, it imposes a trackage charge and the defendants in all cases by their own motive power and with their own crews transport the
42 cars to and from the stock yards. Apparently at the stock yards the work of unloading is done by the Stock Yards & Transit Company.

Upon this state of facts it is difficult to see how the Union Stock Yards and Transit Company can be held subject to the act in this proceeding. The act provides that it shall apply "to any common carrier or carriers engaged in the transportation of passengers or property." The Union Stock Yards & Transit Company is not in any sense of that word a carrier as to this freight. It publishes no tariff; it issues no way bill; it has nothing to do with the transportation of this property. It possesses no incident and discharges no function of a common carrier in respect to this traffic.

In so holding we have in mind the cases Kentucky & I. Bridge Co. v. Louisville & N. R. Co. (2 I. C. C. Rep., 162; 2 Inters. Com. Rep., 102) and Independent Refiners' Asso. v. Western New York & P. R. Co. (6 I. C. C. Rep., 378). In the first of these cases it was held that a bridge company owning a bridge crossing the Ohio River and engaged in transporting carloads of interstate freight across that bridge for a switching charge was a common carrier de facto which might maintain a petition under the act to regulate commerce for the purpose of compelling another carrier subject to the act to afford it equal facilities for the forwarding of such freight. It may be noted that the circuit court took a different view of that question even, holding that the bridge company under its act of incorporation was not a common carrier. Kentucky & I. Bridge Co. v. Louisville & N. R. Co. (37 Fed. Rep., 567; 2 Inters. Com. Rep., 351). In the matter of the Independent Refiners' Association, the Lehigh Valley Railroad was engaged in the discriminating practices complained of, and leased its road for a short time to the Philadelphia & Reading Railroad Company, by whom the practices were continued. Upon the termination of the lease the Lehigh Valley resumed possession of its property and still continued the same discriminations. The Commission held that the Lehigh Valley Company was liable for damages accruing to shippers by these unlawful practices during the period of the lease.

In the case before us the Union Stock Yards & Transit Company was given by its charter the option of becoming a common carrier over its tracks or not. With respect to this traffic it elected not to become and has never become a common carrier. We decide merely that in this matter we have no power to reduce this trackage charge nor to make any order which shall affect the Union Stock Yards & Transit Company.

The railway companies who impose and collect the charge are the
43 only parties who can be reached. Whether in respect to dead freight which the Union Stock Yards & Transit Company transfers to or from its yards for a definite switching charge, when such transfer is part of interstate transportation, that company is a common carrier subject to the act to regulate commerce, or whether that company, having elected to become a common carrier with respect to this dead freight, could refuse to be a common carrier subject to the act in respect

to carloads of live stock duly tendered it for transportation, are questions which we do not consider.

The motion of the Union Stock Yards & Transit Company to be dismissed should be sustained.

This brings us to the real question, and it is important to observe exactly what that question is. It is not as to the reasonableness of the through rate as a whole, including this terminal charge, but merely as to the lawfulness of the terminal charge itself.

Ordinarily the whole rate is the only thing which is or can be considered and passed upon. The Commission has nothing to do with the division of that rate, that being a matter which is left entirely to the agreement of the carriers themselves. Here, however, the rate as a whole is not called in question, and there is no evidence in the case from which it can be found that the through rates from the points in question to Chicago is or is not a reasonable rate. It must be assumed that the rate, excluding this terminal charge, is a fair one to both parties.

If the true rate were what was really aimed at by the complaint, then all ground of complaint has been removed since the complaint itself was filed. About October 1, 1896, rates on live stock from points embraced in the territory covered by this complaint to all Western markets, including Chicago, were reduced 5 cents per 100 pounds. This would amount to from $10 to $15 per car. Therefore the Texas shipper could actually deliver his stock in Chicago for from $8 to $13 per carload cheaper than he could before the $2 rate was imposed, and all the complaint asks for is the abolishment of that terminal charge.

This charge is imposed by the terminal carriers at Chicago and those carriers receive and retain the entire amount of that charge. The complaint is that this charge is an unlawful one; that no matter what the Chicago rate may be, the addition of this particular sum to that rate is in violation of the act to regulate commerce.

It is suggested by at least one of the defendants that if not the through rate, but the terminal charge, is the matter in controversy,
44 then the Commission has no jurisdiction over that subject, since the service performed is a purely local one. This, however, is not so. Some of these defendants show by their testimony that they insist that it shall be stated in the bill of lading itself that delivery is to be made at the Union Stock Yards, and they all agree that the understanding of the parties, when the shipment leaves its initial point, is that the stock must be and is to be delivered at the Union Stock Yards in Chicago. The undertaking, therefore, is to transport this stock from the point of shipment to the Union Stock Yards. The freight has not reached its destination until it reaches the Union Stock Yards. Until so delivered it is interstate commerce and subject to the act to regulate commerce. If the carriers forming the through line elect to divide the entire rate and to designate a certain rate for the performance of a certain service, if they show in proof that a particular carrier is alone responsible for and alone interested in that charge, then we may deal with that particular carrier and that particular charge irrespective of the other charges which make up the entire rate.

The single question is, therefore, Is the terminal charge of $2.00 imposed by the carriers whose lines enter the city of Chicago in violation of the act to regulate commerce?

The complainants insist that it does violate the second section of that act in that similar charges are not imposed at other live-stock markets where the conditions are substantially the same. This claim involves a misconception of the second section. That section of our act corresponds to what is known as "the equality clause" in the English act. That clause, which was enacted before the "undue preference clause," corresponding to our third section, provided, in substance, that railways should exact the same compensation for the same service from all persons. The intent of our second section is to prevent discrimination between individuals. It prohibits the rendering of a given service to one person for a less compensation than is exacted from some other person for the same service under substantially similar circumstances and conditions. There can be no violation of that section unless the services are "like." And in order to be "like" within the meaning of that section they must be rendered at least over the same line. Assume, for instance, that some one of these defendants reaches both the city of Chicago and the city of Omaha. Now, if that line should absorb this terminal charge in Chicago in the case of one shipper and should decline to absorb in the case of another shipper from the same point, that would be a discrimination under the second section, but if this line absorbed the terminal at Omaha and did not absorb it at Chicago, that could not work a violation of the second section, for the service of transporting to Chicago and the service of transporting to Omaha is not a like service within the meaning of that section. The second section can therefore have no application to the facts in this case.

It is urged that this charge is a violation of the third section, for the reason that it unduly prefers other stock markets of the West as against Chicago, in that similar charges are not imposed at those markets. The different places referred to in the testimony are East St. Louis, Kansas City, Sioux City, and Omaha, and it appears that at none of these places is such a charge made. The claim of the complainant seems to be two-fold:

First. The rates from Texas points to these different markets have for many years differed from each other by certain differentials. It has during all that time cost the shipper a certain price to send a given carload to East St. Louis and a certain amount more to send that same carload to Omaha or Chicago, respectively. Now, when this switching charge was imposed on the 1st day of June, 1894, it increased by exactly that much the cost of sending a carload of live stock from any particular point in Chicago without a corresponding increase to the other markets named. If the relation was right before, it became wrong by the imposition of this charge.

Second. Chicago is one of several Western stock markets. At all these markets live stock is delivered and marketed in substantially the same way. It is the duty of the defendants in serving these different markets to treat all alike, and if they absorb a particular charge in one case, they must absorb that charge in every case. To impose a terminal charge at Chicago and no similar charge at these other markets is a preference in favor of the other markets to the disadvantage of Chicago.

It is certainly true that the addition of this terminal makes it so much more expensive for the shipper to deliver his live stock at the stock

yards in Chicago and that this additional expense must to that extent work against Chicago as a cattle market. If a terminal charge is imposed at Chicago and not at these other markets, that certainly is to the disadvantage of Chicago. If, therefore, the interstate-commerce act requires that any absolute differential shall be maintained between these different markets or that they shall be treated with absolute equality in the matter of terminal charges, and invest' the Interstate Commerce Commission in the first instance, and the courts finally, upon proceedings to enforce its order with authority to determine just what this differential shall be and to enforce this equality of treatment, then the complainants are right in their proposition. If the defendants are under obligation to absorb terminal charges in every case if they do in
46 any, their conduct in this instance is in violation of law. If they are under obligation to maintain an absolute differential between these different markets, it is fair to assume, in the absence of evidence to the contrary, that the one which has for years been in existence is the proper one.

Such can not, however, now be considered the law. The interstate-commerce act, as interpreted by the Supreme Court of the United States, imposes no such rule. That act does not attempt to fix the rates which railway companies shall charge, nor does it in any way provide a tribunal which can establish those rates. The carriers are left entirely to their own discretion in the making of their rates, subject only to certain prohibitions contained in the law. So long as those prohibitions are not infringed every carrier is free to determine for itself what traffic it will engage in and foster, and at what points and in what manner, and to adjust its tariffs and connections accordingly. It can not, in theory at least, impose an unreasonable rate, nor can it discriminate between different shippers in the amount of compensation which it exacts for a like service. It may give to one locality or one commodity a preference over some other locality or some other commodity, provided that preference be not undue or unreasonable. This is the import of the recent cases. Interstate Commerce Commission v. Baltimore & O. R. Co., 43 Fed. Rep., 37; 3 Inters. Com. Rep., 192; 143 U. S., 263; 36 L. ed., 669; 4 Inters. Com. Rep., 92. Cincinnati, N. O. & T. P. R. Co. v. Inter-'tate Commerce Commission, 162 U. S., 184; 40 L. ed., 935; 5 Inters. Com. Rep., 391. Texas & P. R. Co. v. Interstate Commerce Commission, 162 U. S., 197; 40 L. ed., 940; 5 Inters. Com. Rep., 405. Interstate Commerce Commission v. Cincinnati N. O. & T. P. R. Co., 167 U. S., 479; 42 L. ed., 243. Interstate Commerce Commission v. Alabama Midland R. Co., 168 U. S., 144.

What constitutes an undue preference has not yet been defined by the courts. That seems to be a question of fact resting in the judgment of the trier. The preference must not be unnecessary. It must not bear too severely. It must not be unreasonable. Considering all the surroundings and giving to the carrier that latitude which the court concedes it, does the adjustment of its tariffs work an undue and unreasonable preference and advantage?

Regarding this question as one of fact, there are several elements to be taken into account:

1. The charge is a small one. As compared with the entire freight

upon a carload of live stock from Texas to Chicago it is almost insignificant, being only a fraction of a cent per 100 pounds. It is not
47 meant that a discrimination may not amount to an undue preference simply because it is small. Any preference, no matter how slight, may be undue if circumstances do not excuse it. Moreover, the unreasonable exaction complained of in cases of this kind is almost always slight in case of a single shipment. This charge, while but trifling as applied to a single carload, amounts in the aggregate to a very large sum annually. What we have in mind is that the very enormity of the preference might in some cases render it an unreasonable one, although justifiable to some extent; and this is not that case.

1. This discrimination has not worked any appreciable disadvantage to Chicago as a market. An examination of the receipts of live stock in comparison with those of the other markets in question show in some instances since 1893 a relative gain and in some a relative loss. As is said in the findings of fact, this charge must of necessity be to the disadvantage of Chicago, but that disadvantage is not so serious that its effect can be observed. Now, a discrimination may undoubtedly be an undue one although its results cannot be directly traced; but it might easily happen that the very hardship actually resulting in a particular case would make it undue, and that can hardly be said here.

3. The conditions at the different markets are not the same, and an examination of those conditions, as far as they are revealed by this case, leaves it somewhat doubtful just how far there is any preference, due or undue, against Chicago.

It appears that there are certain terminal charges which the carriers are compelled to bear in connection with the delivery of live stock at the stock yards in all these markets. Apparently the only charge which is made by the stock yards at Kansas City and East St. Louis is an unloading charge of 50 cents per car. The different carriers use their own motive power in setting in and taking out the cars, and this, in the case of the most-favored companies, is almost nothing at each end of those points, since the distance that the cars must be moved over the tracks of the stock yards is insignificant. At Sioux City and Omaha the stock yards perform the switching service, and make a gross charge of $1.00 per car for this and the unloading. At Chicago the cost to those carriers which are the most favorably situated seems to be about $1.65 per car, including the trackage and unloading charges. The carriers therefore absorb 50 cents at Kansas City and East St. Louis, $1.00 at Sioux City and Omaha, and $1.65 at Chicago.

If the theory of the complainants is correct, and every stock market must be treated exactly alike in this particular, then Kansas City might well say that the railroad companies should absorb no more at Chicago
48 than at Kansas City, and it would follow that they ought to absorb of the terminal charges at each point 50 cents; that is to say, they should impose a charge of 50 cents at Sioux City and Omaha and $1.15 at Chicago. As already intimated, however, no such rule as this is either contemplated or possible of application, int he absence of some body which absolutely fixes the rates for all carriers to all these points.

Of course, in the above statement only the charges of those carriers which are most favorably located are referred to. Other carriers incur

and absorb much greater amounts in the way of making deliveries of live stock than these. The Chicago & Alton, for instance, pays a switching charge of $2.00 at Kansas City in addition to the unloading charge. Both the Chicago, Milwaukee & St. Paul and the Chicago & North-Western pay the Union Pacific a considerable sum for making delivery at the stock yards at South Omaha. It will be rembered that at Chicago the actual expense of making delivery varies from $1.65 to $3.34.

These increased expenses are due, however, to the unfavorable location of some carriers and are necessary to put those carriers upon an equality with the most-favored ones. The charge made by all carriers from the same section must be the same, and the least expensive line, or what is equivalent to the shortest line, fixes the rate for the others.

4. It appears that these terminal charges are absorbed at other points than Chicago by reason of competition.

The cases from the United States Supreme Court above referred to all hold that competition may afford a legitimate reason for preferring one community to another. Indeed, competition in its various forms is about the only reason which can ever justify such preference. We can hardly see why, if it justifies a discrimination in any case, it may not in this. The Chicago & North-Western Railroad Company makes delivery of live stock at both Omaha and Chicago. Let it be assumed that a terminal charge of $2.00 would be a just and reasonable charge at both those points. Owing to the competition of an independent line which does not reach Chicago, like the Missouri Pacific, the Chicago & North-Western is unable to impose that charge at Omaha. Is this a reason why it should be compelled to absorb the Chicago terminal, which is in every respect a proper and reasonable one? The same reasoning which would hold that it must would put it into the power of a single road to abolish terminal charges at every considerable railway center in the United States.

There undoubtedly may be instances in which the adjustment of rates, each of which is entirely reasonable and proper in itself, works a
49 violation of the third section, but the present case is not one. We hold that, if the imposition of this terminal charge at Chicago is just and reasonable, the fact that similar charges are not imposed by the defendants at the other competing stock markets referred to does not make this an undue preference under the third section.

The complainants insist that this charge is unlawful because it discriminates against live stock and in favor of dead freight in that no similar terminal is imposed upon dead freight.

The testimony upon this point is not very satisfactory. It appears, however, that the rule is to impose the same terminal upon both live stock and dead freight at Chicago, but that in some cases competitive conditions require its absorption in the case of dead freight. The Illinois Central, for instance, charges the terminal except on merchandise intended for Texas points and some other points in the Southwest. It also appears that the terminal charge upon live stock received from the East is $1.00 as against $2.00 upon live stock received from the West. The Wabash Railway charges $2.00 upon cars coming from one section and $1.00 upon cars coming from another section, although the expense to it is in each case identical. This results from competition with Eastern lines.

What has been said in reference to undue preference between different markets applies with equal force to this contention of the complainants. A carrier may, under stress of competition, absorb a terminal charge upon one kind of merchandise or in favor of one locality and not in favor of another, unless in so doing he is guilty of an undue preference, and there is nothing in this case to show any such unlawful conduct on the part of any of these defendants. What seems to be the position of the complainants, that the defendants, as a matter of law, are compelled to charge the same terminal upon all classes of freight and upon cars received from all directions, cannot for the reasons already stated be sustained.

This brings us to consider whether this charge is in violation of the first section, as being an unjust and unreasonable charge. The complainants contend that it is. Their position is that the rate to Chicago includes, of necessity, a delivery of the stock; that a proper delivery cannot be made without providing certain facilities therefor; that the different carriers have not provided such facilities elsewhere, but have made and constituted the stockyards their common depot for this purpose; that this being so they must be to the expense of making delivery at that point, and if some instrumentality which they have hitherto used without charge has become a matter of expense to them, they must bear that expense as an incident to the service. The defendants say
50 that this claim of the complainants has already been passed upon by the court and is res adjudicata. Manifestly the first matter for determination is how far this question is already concluded by judicial action.

At the time this terminal charge was first imposed the Atchison, Topeka and Santa Fé Railway was in the hands of receivers, who were acting, as to that portion of it entering the city of Chicago, under the direction of the circuit court for the northern district of Illinois. One Keenan, soon after the charge was imposed, and apparently for the purpose of testing its legality, made a shipment of live stock from Kansas City to Chicago, upon which he prepaid the published rate to Chicago, but did not prepay the terminal charge. Keenan's place of business was at the Union Stock Yards, and the receivers made delivery, without further instructions, to him at that point, requiring the payment of this additional $2.00 per car. Keenan declined to pay it, and the receivers declined to deliver until such payment was made. Thereupon Keenan filed a petition in the circuit court for the northern district of Illinois, alleging that the charge was illegal and asking that the receivers be directed by the court to make deliveries without the payment of such charge. Immediately after the filing of this petition several other persons, who were members of the Chicago Live Stock Exchange and interested in the shipment of cattle to the stock yards at Chicago, filed intervening petitions, in which they asked the court to direct the receivers not to impose this terminal charge upon any shipments of live stock to the stock yards. The contention of the petitioners was identical with that of the complainants upon this branch of the case, and that contention the circuit court apparently sustained.

That court held upon the strength of Covington Stock Yards v. Keith, 139 U. S., 128, 35 L. ed. 73, that the rate from Kansas City to Chicago

included a delivery of the cattle at Chicago, and that the receivers must make such delivery without further compensation; that the stock yards had become the depot of the Atchison, Topeka & Santa Fé Railway, and was the place at which delivery of live stock in Chicago must be made; that therefore it was incumbent on the receivers to make delivery at that place without the exaction of the terminal charge of $2.00. The court accordingly directed the receivers to deliver Keenan his stock and not impose the terminal charge for the future.

From this decision the receivers appealed to the United States circuit court of appeals for the seventh circuit. That court reversed the judgment of the circuit court and held that the charge, upon the facts
51 as presented in that case, was a legal one. As we understand the reasoning of that court, it is that while a freight rate ordinarily includes the cost of delivery, that is not necessarily true. A carrier may, if it sees fit, divide the total rate, making the cost of delivery a separate charge by itself. At all events it held that, under the circumstances of this particular case, the carrier might lawfully impose a charge for making delivery at the Union Stock Yards, and the Supreme Court of the United States refused an application for a writ of certiorari to review this judgment.

It can hardly be said that this decision of the circuit court of appeals is to be regarded as in the nature of an estoppel. Certain members of the Live Stock Exchange were parties to that suit, but the corporation itself was in no sense a party. The Cattle Raisers' Association of Texas, the original complainant in this suit, does not appear upon the record either as an association or by any of its members. While, however, it can not be treated as having the technical effect of a previous adjudication of this same question, it is a judicial decision which should be of controlling force with us. Whatever order we might make in this case can only be enforced by an application to some circuit court. Any circuit court, even though it were not within the seventh circuit, would feel bound to follow in this case the judgment of the circuit court of appeals. We ought, therefore, to be controlled in the same manner and to the same extent by the judgment of that court. Whatever the views of the Commission might have been as to the questions involved, that judgment is, in effect, conclusive upon us so far as the matters embraced in it were identical with the questions presented here.

An examination of the record in that case apparently shows that every essential fact which could bear upon the determination of this question was presented there, with the single exception of the fact that the Union Stock Yards & Transit Company was originally organized by the various railroad companies centering at Chicago for the purpose of creating a common live-stock market where delivery of live stock destined for Chicago could be made by all the carriers. While this fact would have perhaps an important bearing upon the question as to whether these companies ought in good conscience to impose this charge, we hardly think it could have produced a different result in the determination of the legal question submitted to the court. The defendants in this case never owned a majority of the stock of the Union Stock Yards & Transit Company. They have for many years owned none of that stock. Some of the defendants never owned any of it. It does not appear that the various railroads ever had any legal right to insist upon the use of the

tracks of the stock yards free of charge nor that they could on
52 the 1st of June, 1894, have successfully resisted the payment of the charge exacted by the Stock Yards Company.

It must be accepted as the law of this case that there is no legal obligation, under the circumstances presented, upon the part of the various carriers to make delivery at the Union Stock Yards. They have a legal right to impose a charge of the nature which they do impose.

We do not think, however, that this is the question presented to us for determination. Most questions coming before this Commission are questions of fact, not questions of law. Whether a particular thing should be considered is a legal question, but when it has once been determined what elements, as a matter of law, are to be taken into account almost every case resolves itself into a question of judgment. Upon a survey of the whole situation, looking at these matters from the standpoint of both parties, what, in fairness to the public and the railroads alike, ought to be done? This is the thing for determination here. That the defendants may charge one sum to Chicago and an additional sum for delivery at the Union Stock Yards, as a legal proposition, has been settled. Whether they ought to make the charge they do, or any charge, or whether the charge for delivery is already fairly included in the rate, is a proposition of fact for consideration. Under all the circumstances, is this terminal charge a "just and reasonable" one under the first section?

The defendants say that the complainants have admitted that if the imposition of any charge is lawful, then this charge is a reasonable one. The intervenor did concede upon the trial that $2.00 was a reasonable switching charge, if any such charge should be imposed. The complainant did not go quite that length. It can not be said that either of them conceded that the imposition of the charge was just and reasonable under the first section. The defendants have all shown what the cost of this service to them is. It appears from the findings of fact that in some instances the actual cost to the carrier, including the trackage charge paid to the Union Stock Yards and Transit Company and the unloading charge also paid to that company, is less than $2.00, probably not to exceed upon a fair basis $1.50. In the great majority of cases, however, it is more than $2.00, and we are not prepared to say that, having reference entirely to the cost of service, a charge of $2.00 would be an extravagant one. But this question is broader than the mere cost of service. It embraces the whole situation, in which the cost of service is but a single factor.

The United States Supreme Court said in the Covington Stock Yard Case that a freight rate between two termini carries with it
53 the cost of a delivery, and that the carrier is obliged to make such delivery and to provide whatever reasonable facilities may be necessary thereto without the imposition of any further charge. While the circuit court of appeals has held that this language does not apply to and control the present case, it nevertheless expresses the general understanding in this country. Ordinarily the single rate includes all terminal charges. Upon the European continent freight rates do not appear to be made in this way. There is, first of all, a terminal charge, which applies to all traffic, to which a charge for movement is added. In England at the present time a shipper may require

the railroad company to segregate the rate, determining what part of it is fairly a terminal charge, and if he does not take advantage of the terminal facilities he may demand under some circumstances a reduction in the rate to that amount; but, with us, the rate ordinarily includes the cost of delivery.

Not only is this ordinarily so, but it seems to have been always considered that the live-stock rate to Chicago, the very rate under consideration, included such a delivery. Going back to 1865, we find that the railroad companies had provided in different parts of the city yards at which cattle could be delivered and sold. There were then four of these different yards, and every carrier entering Chicago was obliged to make delivery at whichever one the shipper might designate without additional charge. This was found expensive and inconvenient to the carriers, and for the purpose of obviating the inconvenience and diminishing the expense, they brought about the organization of the Union Stock Yards & Transit Company. That company originated entirely with the railroads, and its purpose was to provide a common market at which all carriers might unload the stock which they brought into Chicago. They thereby recognized the fact that a delivery could be made by them in this way cheaper and more conveniently than if each carrier provided facilities of its own.

That is undoubtedly true to-day. While the testimony in this case is not sufficiently definite to warrant an absolute finding of fact, it does show to a moral certainty that the carriers bringing live stock to the city of Chicago can better afford to be to the expense of transporting it to the stock yards than to create yards of their own, if such a thing were now possible.

Previous to 1865 carriers at Chicago had always made delivery of live stock as a part of the Chicago rate. In that year they adopted this present mode of effecting that delivery. For thirty years these carriers, by their regular and uniform course of business, without protest
54 and without any suggestion of hardship, have made delivery at the stock yards in this way. They have thereby recognized the fact that the rate to Chicago carried with it a delivery to the stock yards, or, at all events, carried with it whatever expense was necessary to transfer cars from the various tracks to the stock yards and unload those cars at the stock yards. No suggestion is made that the conditions are different to-day than they always have been. It is said that the rates on live stock have fallen and that they are now too low. If they are too low, they ought to be made higher. But no reason is assigned why the division of the terminal carrier at Chicago should be increased now without any increase of the entire rate.

Since 1865 the value of the freigh' terminals in the city of Chicago owned by these defendants has enormously increased. This increase in value has without doubt been much greater in proportion tha/ that of the remainder of their tracks. They might with propriety, and perhaps they do, insist that they should be allowed an arbitrary charge for the delivery of freight at these expensive terminals. While, however, the expense to the defendants of making delivery of other kinds of freight at Chicago has unquestionably increased, their expense in making delivery of this live stock, laying out of account the trackage charge which they were compelled to pay for the first time in 1894, has steadily decreased and is

probably less to-day than it ever was before. Upon what theory, therefore, can the charge be justified?

The only new condition is that the Stock Yards & Transit Company imposes for the first time this trackage charge. The Illinois Central Railroad Company estimates that the actual cost to it, including the trackage charge and the amount paid for unloading, of all the service embraced in this terminal charge is $1.65. Probably a conservative estimate would be $1.50. That is to say, the Illinois Central Company takes advantage of the circumstance that the Union Stock Yards & Transit Company have compelled it to pay a charge of 80 cents to exact from the public not only the 80 cents which it is compelled to pay, but also the 70 cents which it costs it to make delivery at the stock yards and a clear profit, in addition, of 50 cents upon each car which it puts into those yards. We do not think, upon the whole case, that this is either just or reasonable. We see no reason why that company should not render now as a part of the service covered by the Chicago rate the same service which it has always rendered for that rate. We do not believe that these carriers should be allowed to add an arbit'ary charge to the Chicago rate for doing a thing which they for thirty years have said was included in that rate, and which we believe, considering
55 the manner in which rates are made up and in which this rate has been made up, ought to be included in the rate.

We are inclined to think, however, that they may reimburse themselves for whatever they are compelled to actually disburse in the way of trackage charges to the Union Stock Yards & Transit Company. That company is apparently entirely independent of the railway companies. They cannot and do not in any respect control its charges. This particular charge seems to have been exacted from them in opposition to the most earnest protest. It does not seem just, therefore, to compel them to absorb this charge. If the Union Stock Yards had become the depot of the various carriers in such a way that it was their legal duty to make delivery at that point, this, of course, would be otherwise, for if they were under a legal obligation to get the stock to the stock yards, they must pay whatever additional expense the rendering of this service entailed; but it has been finally determined that there is no such obligation, and this being so, it does not seem, as a matter of fairness, that they ought to be compelled against their will to make good this extra charge. They might as a matter of policy choose to do so.

The total trackage charge imposed is in some cases 80 cents per car, and in other cases $1.50 per car, and the testimony shows that about one-half the total number of cars of live stock brought in by the defendants pay each charge, so that the average trackage charge paid the Union Stock Yards & Transit Company would be about $1.15. Strictly speaking, it is probably true that only the lower charge should be considered by us, since the public is entitled to the least expensive line. If the long line elects to compete, it must do so subject to its natural disadvantages. The various defendants admit that whatever charge is made must be a uniform one, so that a reasonable charge would probably be a reasonable charge for that road most advantageously situated. Upon this basis no carrier should be allowed to charge more than 80 cents per car trackage. We have thought, however, that under all the circumstances a terminal charge of $1.00 would be a fair one. This is slightly

more than the trackage charge paid by some carriers and somewhat less than that paid by other carriers.

Our judgment is, therefore, that the exaction of a terminal charge of more than $1.00 per car is in violation of the first and possibly of the third section of the act, and that the defendants ought not to exact more than this sum. To *order them not to do so would, however,* be prescribing a rate for the future, and that, under the decision of the United States Supreme Court in Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co., 167 U. S., 479, 42 L. ed. 243, we have no
56 power to do. We shall make an order directing the carriers to cease and desist from charging and collecting the present charge of $2.00. The Supreme Court in the case above referred to bases its decision upon the ground that the interstate-commerce act does not in express terms delegate to the Commission the power to prescribe a rate. It is intimated in that case that the power of Congress to do so, had it elected, was ample. Now, the fifteenth section of the act to regulate commerce does in express terms provide that the Commission shall, upon finding a carrier in violation of any of the provisions of that act, order it to cease and desist therefrom. If this is equivalent to prescribing a rate for the future, it is within the express terms of the act itself, and therefore not open to the objection that the power has not been delegated. What the practical effect of such an order may be, or whether it can be given any practical effect, remains to be seen.

The Cattle Raisers' Association asks reparation in behalf of its various members to the extent that they have been compelled to pay this unlawful charge. The intervening petitioner does not ask reparation, either in its own behalf or in behalf of its members. Indeed, the case apparently discloses that none of these charges finally fall upon the commission merchants at Chicago, since they are paid on account by the owners of the cattle. If the members of the Live Stock Exchange have suffered any damage it is of that indirect sort which results from the diversion of business from Chicago to other markets.

It was stated at the conclusion of the testimony that the matter of reparation would be held open to be further proceeded with, in case it was held that the exaction of this terminal charge was unlawful.

In Van Patten v. Chicago, M. & St. P. R. Co., 81 Fed. Rep., 545, this matter of recovery in case of the payment of an excessive freight rate came before the circuit court for the northern district of Iowa. The plaintiff in that case had brought suit in the circuit court for the excess above a reasonable rate upon grain from points in Iowa to Chicago. It appeared that the rates charged and collected by the defendant railway company were the open published rates, and the court held that, this being so, the plaintiff was not entitled to recover. The position of the court apparently was that the publication of a given rate, under the sixth section, by the carrier fixed that rate; that when the rate was so published it became unlawful to receive any other or different rate, and that it could not be an unlawful act to demand and collect the published rate.

If this opinion should finally prevail, it would result that the
57 public has absolutely no protection against an unreasonable rate.

The decision of the United States Supreme Court in Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co., supra, holds that

the Commission, and therefore the court, has no power to correct the rate for the future. There is, therefore, no way in which a railway company can be compelled to publish a reasonable rate. Now, if a rate when published is conclusively presumed to be reasonable and the shipper has no right of action to recover any portion of that rate, then there is absolutely no way in which the public can obtain any redress from the exaction of a rate no matter how extortionate. In the discussion of this question it has often been said at the bar, and sometimes intimated from the bench, that at common law rates made by common carriers must be just and reasonable, and that anything paid in excess of a just and reasonable rate might be recovered. If this were so, and the decision in the Van Patten case is correct, then the enactment of the interstate-commerce law must have cut off even that remedy.

The eighth section of the act provides that if any carrier shall be guilty of any violation of the act in consequence of which damage is suffered such carrier shall be liable to the person injured for the amount of the damage. Section nine provides that any person claiming such damages may proceed for their enforcement either by complaint before the Commission or directly in the Federal courts. The first section declares that all rates shall be just and reasonable, and the Commission has hitherto held that, if the carrier prescribed by its schedules and subsequently collected a rate which was unjust and unreasonable, it thereby violated the first section, and that any person who had paid this rate might by complaint to the Commission, upon showing that the rate was unjust and unreasonable and to what extent, obtain an order for the payment of damages in the amount that the sum paid exceeded a just and reasonable rate. Railroad Commission of Florida v. Savannah F. & W. R. Co., 5 I. C. C. Rep. 13, 3 Inters. Com. Rep. 688; Lehmann v. Texas & P. R. Co., 5 I. C. C. Rep. 44, 3 Inters. Com. Rep. 706; Perry v. Florida C. & P. R. Co., 5 I. C. C. Rep. 97, 3 Inters. Com. Rep. 740; Michigan Box Co. v. Flint & P. M. R. Co., 6 I. C. C. Rep. 335.

While we recognize the fact, as forcibly pointed out in the Van Patten case, that a suit for the recovery of the excess of an extortionate freight rate is neither a just nor an adequate remedy, we are inclined to adhere to our previous holding in this respect. It is not, however, every case where the payment of an excessive rate carries with it reparation. Each case seems to depend upon its own equities. Capehart v. Louisville & N. R. Co., 4 I. C. C. Rep. 265, 3 Inters. Com. Rep. 278; Potter
58 Mfg. Co. v. Chicago & G. T. R. Co., 5 I. C. C. Rep. 514, 4 Inters. Com. Rep. 223; Loud v. South Carolina R. Co., 5 I. C. C. Rep. 529, 4 Inters. Com. Rep. 205; James v. Canadian P. R. Co., 5 I. C. C. Rep. 612, 4 Inters. Com. Rep. 274; Evans v. Union P. R. Co., 6 I. C. C. Rep. 520.

We shall therefore continue the case for proof of damages, reserving all questions as to reparation until that proof is made.

Following the course adopted in Independent Refiners' Asso. v. Western New York & P. R. Co., 6 I. C. C. Rep. 378, the proper parties to make such proof are the members of the complainant association. The Cattle Raisers' Association, as an association, has suffered no damages.

An order will be made and the case continued, in accordance with the foregoing views.

EXHIBIT D.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 20th day of January, A. D. 1898.

Present: Hon. Martin A. Knapp, chairman; Hon. Judson C. Clements, Hon. James D. Yeomans, Hon. Charles A. Prouty, Commissioners.

59 CATTLE RAISERS' ASSOCIATION OF TEXAS
v.
THE FORT WORTH AND DENVER CITY RAILWAY Company, and Morgan Jones, Receiver thereof; The Wichita Valley Railway Company; The Missouri, Kansas and Texas Railway Company of Texas; The Missouri, Kansas and Texas Railway Company; The St. Louis Southwestern Railway Company of Texas; The St. Louis Southwestern Railway Company; The Gulf, Colorado and Santa Fe Railway Company; The St. Louis and San Francisco Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; The Houston and Texas Central Railroad Company; The Southern Pacific Company; The Texas and Pacific Railway Company; The Missouri Pacific Railway Company; The Chicago, Rock Island and Texas Railway Company; The Chicago, Rock Island and Pacific Railway Company; The Chicago and Alton Railroad Company; The Burlington and Missouri River Railroad Company in Nebraska; The Chicago, Burlington and Quincy Railroad Company; The Chicago and North-Western Railway Company; The Fremont, Elkhorn and Missouri Valley Railroad Company; The Chicago, Milwaukee and St. Paul Railway Company; The Union Pacific Railway Company, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, Receivers thereof; The Chicago Great Western Railway Company; The Illinois Central Railroad Company; The Wabash Railroad Company; The Union Stock Yards and Transit Company.

This case being at issue upon complaint and answers on file, and having been duly heard, and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report and opinion containing its findings of fact and conclusions herein:

It is ordered and adjudged that the report and opinion of the Commission on file herein be, and the same is hereby, made a part of this
60 order. That the defendants, the Atchison, Topeka and Santa Fe Railway Company; the Chicago, Rock Island and Pacific Railway Company; the Chicago and Alton Railroad Company; the Chicago, Burlington and Quincy Railroad Company; the Chicago and North-

Western Railway Company; the Chicago, Milwaukee and St. Paul Railway Company; the Chicago Great Western Railway Company; the Illinois Central Railroad Company; and the Wabash Railroad Company, be, and they severally are, hereby notified and required to cease and desist, on or before the 1st day of April, 1898, from charging, demanding, collecting, or receiving (in addition to their regularly published transportation charges) the sum of $2 per carload of live stock as compensation for terminal services rendered in making delivery of live stock at the stock yards of the Union Stock Yards and Transit Company in the city of Chicago, State of Illinois, which said charge is found and held in and by said report and opinion of the Commission to be unreasonable, unjust, and unlawful. That said defendants be, and they severally are, hereby recommended not to charge, demand, collect, or receive in excess of $1 per carload as compensation for terminal or switching services rendered in the delivery of live stock at the yards of the Union Stock Yards and Transit Company in said city of Chicago, which said sum of $1 per carload as compensation for such terminal or switching services is found and declared in and by said report and opinion to be just, reasonable, and lawful.

It is further ordered that this case be, and is hereby, continued for proof of damages by members of the complainant, the Cattle Raisers' Association of Texas, and that all questions concerning reparation herein, including the question whether any reparation shall be awarded, be reserved for consideration after such proof shall have been made.

And it is further ordered, that a notice embodying this order be forthwith sent to each of the defendant corporations, together with a copy of the report and opinion of the Commission herein, in conformity with the provisions of the fifteenth section of the act to regulate commerce.

Exhibit E.

Cattle Raisers' Association of Texas
v.
Fort Worth & Denver City Railway Company.

[On rehearing.—Decided August 4, 1898.]

Defendants filed petition for rehearing, alleging error in the conclusions set forth in the report and opinion of the Commission,
61 wherein, it was held that a terminal charge of $2.00 per car imposed by defendant carriers at Chicago for delivery of live stock at the Union Stock Yards in that city is unreasonable and unjust and that exaction of more than $1.00 per car for such service is unlawful, under section one of the act to regulate commerce. Held, upon hearing of the parties and reconsideration of the record, that there was no error in the original determination; and further, that the charge complained of and any charge for the terminal service at Chicago in excess of $1.00 per car constitutes undue prejudice to Chicago under section three of the statute.

T. W. Tomlinson, for Chicago Live Stock Exchange.

Robert Mather, for C. R. I. & P. R. R. Co., and C. R. I. & T. R. R. Co.

George R. Peck and C. B. Keeler, for C. M. & St. P. Ry. Co.
L. W. Bowers, for C. & N. W. Ry. Co., and F., E. & M. V. Ry. Co.
Robert Dunlop, for A., T. & S. F. Ry. Co., and G. C. & S. F. Ry. Co.
F. B. Kellogg, for Chicago Great Western Ry. Co.
N. J. Scrafford, for Chicago & Alton R. R .Co.
C. M. Dawes, for Chicago, Burlington & Quincy Ry. Co.

REPORT AND OPINION OF THE COMMISSION ON PETITION FOR REHEARING.

PROUTY, Commissioner:

One of the conclusions of the Commission in the above case was that the exaction at Chicago of a terminal charge on live stock of more than $1 per car is in violation of the first, and possibly the third, section of the act, and that the defendants ought not to exact more than this sum. The defendants move for a reconsideration of this conclusion and a rescission of the order made in pursuance of it. They do not ask to introduce further testimony, but simply that the question be further considered upon the present record; and in making this application they have fully argued the various phases of the case thereby presented.

The application is based upon the ground that the complainant and the intervener admitted upon the hearing "that the $2 terminal charge is a reasonable charge, provided any charge could legally be made for the terminal service," and it is urged that in the face of this admission the charge ought not to be found unreasonable.

62 The report and opinion of the Commission already published finds that the complainant did not make the admission claimed by the defendants, and an examination of the record apparently supports that finding. At the bottom of page 540 of the testimony appears the following:

"Mr. NEWLIN. The gentleman said something about an admission. So far as I am concerned, I do not know what he refers to.

"Mr. BOWERS. The admission in this instance was made by the very gentleman who asks the question.

"Com'r PROUTY. That if this charge was proper to be imposed it was a reasonable charge.

"Mr. NEWLIN. I did not admit that."

So far as we can ascertain, this is the last reference made in the record to any admission of that sort. Mr. Newlin acted as the sole attorney and representative for the complainant, and we do not think it can be said upon this state of the record that the complainant is concluded by any admission of the kind claimed. The case already exactly states the fact in that particular.

The Commission itself did, however, state upon the hearing at various times, in terms upon which the defendants were justified in relying, that no question could be successfully made as to the reasonableness of this charge in certain aspects. Just exactly the scope of that intimation can be understood by referring to the circumstances under which it was given. The defendants were proceeding to show by testimony in each case that the actual cost to them of transporting these carloads of live stock, including the trackage charge and the cost of unloading, was equal to or in excess of $2. Thereupon it was suggested by the Commission, admitted

by the intervener, and at first partly admitted by the complainant, that the cost of service, including the trackage charge and the cost of unloading, was sufficient to justify the imposition of this terminal charge, provided, under the circumstances of this case, it could properly be imposed. We understand that the defendants are given the full benefit of this in the report and opinion already filed. To remove all doubt upon that subject, however, if it is not clearly found, we now find that, looking entirely to the cost of service and including as a part of that cost the trackage charge paid the Union Stock Yards & Transit Company and the unloading charge paid that same company, the amount of this terminal, if, under the circumstances of this case, it is proper to impose the charge, is reasonable. If any modification of the present findings is necessary, they are hereby modified to that extent.

63 That finding must, however, be carefully read in connection with the other facts in the case and the conclusion of the Commission that the imposition of this terminal charge is unreasonable. The defendants say it was admitted that this charge was reasonable, "provided any charge could be legally made for the terminal service." The intimation of the Commission was, as indicated in the above extract from the record, "that if this charge was proper to be imposed, it was a reasonable charge." The reason for the conclusion of the Commission is to be found in the distinction between these two statements. What the Commission passed upon finally was, not whether a terminal charge of this sort could be legally made—that had been already determined by the courts—but whether this particular charge could be properly imposed under the circumstances of this case. To avoid misapprehension we will restate here the grounds for our decision, and for that purpose we confine attention to this rate as it existed on May 31 and on June 1, 1894.

May 31st there was in effect a certain rate on live stock from various points to Chicago, and that rate, upon the record in this case, must be taken to be a just and reasonable one. The defendants intimate in their answers that this rate has been forced down until it was too low, and something was said in the proof looking in the same direction. Upon the other hand, the complainants started in to prove that the rate at that time was too high, but as is found by the case, both these claims were virtually abandoned. There is nothing in the record before us to show that the rate was other than a right one, and we assume that May 31st the rate in effect was just and reasonable.

Now, just what did this live-stock rate to Chicago include? The defendants insisted upon the reargument of this case that it covered the transportation of that live stock to the point where, on its way to the Union Stock Yards, it left the tracks of these several defendants, and nothing more. The complainants insisted that that rate covered a delivery of the stock at the stock yards. We are unable to see any ground whatever for the contention of the defendants. As a matter of law, the undertaking to transport live stock from one place to another includes a delivery of the stock. Originally live stock brought to Chicago by these defendants upon the Chicago rate must be delivered at any one of four different points. This was necessitated by the actual competitive conditions at that market. The railway companies, for the purpose of avoid-

ing the expense and inconvenience of this kind of delivery, created the present stock yards. It was entirely at their suggestion and entirely for their benefit at the outset. From the time the stock yards
64 were constructed down to June 1, 1894, the various defendants had by arrangement with the Stock Yards Company the right to use the tracks of that company for the delivery of this stock at the Union Stock Yards. By the action of the various carriers that became the only place in Chicago at which live stock could ordinarily be delivered. Whenever a carload of live stock was shipped to Chicago, in the absence of special directions, it was taken to the Union Stock Yards. This was understood both by the carrier and by the shipper. No defendant had any facilities previous to June 1st for delivering live stock in any quantity at any other point than at the Union Stock Yards. Now, in view of the legal liability resting upon the carrier to make a delivery somewhere, in view of the fact that this delivery must be made at the stock yards and was habitually made there, it seems impossible that the defendants in making this rate from the point of shipment to Chicago did not include in that rate and contemplate as a part of the service covered by that rate a delivery at the Union Stock Yards. It is absurd to say that the Chicago rate paid for the transportation of that stock up to some switch in the field, or in the city where there was no facility for a delivery, and that the transportation beyond that point was a gratuity. We think and find that the Chicago rate on May 31, 1894, included, as it had included for the last thirty years, a delivery and unloading of the stock at the Union Stock Yards, and that rate, upon the record in this case, was a just and reosonable one.

June 1, 1894, these defendants by concerted agreement among themselves increased this rate $2.00 per car. If the rate on May 31st was a just and reasonable one, the rate on June 1st was an unjust and unreasonable one, unless some new condition justified the imposition of that additional charge. We have found that to the extent of $1.00 a new condition did justify the additional charge, for the reason that then, for the first time, the Stock Yards Company exacted this trackage charge. In other words, the cost of service to the defendants was increased by just $1.00 on that day. It must follow, therefore, as a necessary conclusion, that of the increase which the defendants made, $1.00 was justifiable and $1.00 was unjustifiable. This is not, however, because $2.00 is an unreasonable charge for transporting a car to the stock yards, if that service was performed by some independent agency, but because, since the defendants were already receiving compensation for this service, they ought not to charge for it the second time. Of this proposition we have no doubt. Upon the assumption that the rate May 31st was a just one, we regard the imposition of anything above what the defendants were then compelled for the first time to pay as an unwarranted exaction
65 and a violation of the first section of the act to regulate commerce, if it is possible to violate that section.

The defendants insist that the Walker-Keenan case decided that a terminal charge of this sort may be imposed, leaving open only the question as to the amount of such charge, and that, inasmuch as it is found that a charge of $2.00 is reasonable, any further consideration of

that question is concluded. We have already stated in the opinion that we consider ourselves bound by that case and have stated further our understanding of what it decides. To avoid any misapprehension we repeat here what has been in substance already said.

To understand the scope of that case the three cases—Covington Stock Yards Co. v. Keith, 139 U. S., 128, 35 L. ed., 73; Union Trust Co. v. Atchison, T. &. S. F. R. Co., 64 Fed. Rep., 992, and Walker v. Keenan, 73 Fed. Rep., 755—must be read together. In the first of these cases the Supreme Court of the United States had said in unmistakable terms that a rate on live stock included the receiving and delivery of that stock, and cast upon the carrier the burden of providing such facilities as might be necessary to make that delivery. Upon the strength of that case Judge Grosscup held, in Union Trust Co. v. Atchison, T. & S. F. R. Co., the second of the above cases, and the case in the circuit court in which this particular terminal charge was attacked, that the rate on live stock from Kansas City to Chicago carried with it a delivery of the stock, that the carrier could not split up that rate, apportioning one part of it to the transportation of the stock to some point upon its line in or near Chicago and another part of it to the delivery of the stock itself, and that inasmuch as the defendants did and must deliver this stock at the Union Stock Yards the rate covered such delivery and the terminal charge was illegal. This was held as a matter of law in reliance upon the Covington Stock Yards case, the only question of fact being whether the carrier did make delivery at the stock yards.

In Walker v. Keenan, being the case last referred to upon appeal, the circuit court of appeals decided that the Covington case had been misapplied by the circuit court; that while the undertaking of the carrier to transport live stock includes a delivery, the carrier may, if it sees fit, divide the charges which it exacts for that undertaking, imposing one charge for the transportation and another charge for the delivery, and that as applied to the situation at Chicago the appellants in that case might impose one charge for the transportation of the live stock to the point where it left their own line and a terminal charge for the delivery at the stock yards. In making this decision the attention of the
66 court was confined entirely to the legal proposition for which the appellees were contending, namely, that the Chicago rate must include a delivery, and that therefore the defendants could not, as a matter of law, make any additional charge for the only delivery which, under the circumstances, was possible.

This decision of the circuit court of appeals the Commission accepts. It assumes that, as a legal proposition, the carrier may make a charge of the sort which it attempts to make in this case, but it holds, as a matter of fact, that it is unreasonable to impose this terminal charge for the reason that the rate to Chicago already includes that charge. The circuit court of appeals says that the carrier may segregate its rate, charging one part to a certain point and another part beyond that point; but there is a wide difference between segregation and addition. What the carriers have done here is to add an arbitrary sum for a service for which they are already receiving a reasonable compensation.

Both the Covington case and the Walker-Keenan case explicitly state that the undertaking of the carrier in case of live stock is to receive,

transport, and deliver that stock. In the former case Mr. Justice Harlan said:

"The transportation of live stock begins with their delivery to the carrier to be loaded upon its cars, and ends only after the stock is unloaded and delivered, or offered to be delivered, to the consignee, if it be found, at such place as admits of their being safely taken into possession."

In the Walker-Keenan case it is stated: "As incidental to its business of transporting or hauling cattle, a railroad company must provide means of loading, unloading, and caring for such freight pending its delivery to the consignee. The hauling the cattle from one point to another and the providing the car, track, engines, and servants for that purpose are no more a part of the service rendered by the carrier than are the loading and unloading and the providing the appliances and servants for those purposes."

That, as a matter of law, is the undertaking of the carrier. When the carrier charges one gross sum for that undertaking the presumption is that the sum covers the entire service. Such is the almost universal method of making freight rates in this country. When, under the circumstances of this case, these defendants through a long series of years charged a given rate for the receiving, transporting, and delivering of live stock at the Union Stock Yards it must be held that this rate covered the entire undertaking, and as a part of that undertaking that it yielded to the defendants a fair compensation for transporting to the stock yards and there unloading. And while the defendants may,
67 if they choose, divide this rate, they can not arbitrarily increase the rate by adding a terminal charge of the character indicated.

In The Covington Stock Yard Case the carrier imposed a charge of 60 cents per car for the delivery of live stock at Covington through the Covington Stock Yards. The circuit court of appeals intimates in the Walker-Keenan Case that there would be no legal objection to the imposition of that charge. Now, let us suppose that through a long series of years the carrier, for a given rate, had transported and delivered through the stock yards at Covington live stock, and that upon a certain day it arbitrarily imposed an additional charge of 60 cents. Has not this Commission jurisdiction under the first section of the act to regulate commerce to inquire whether, under all the circumstances, the imposition of that charge is a just and reasonable one? Whether such charges may be made as a matter of law is one thing; whether they ought to be made in particular instances, as a matter of fact, is another thing. Whether the putting into effect June 1, 1894, of this terminal charge without any reduction of the previous rate was just and reasonable, as a matter of fact, was not considered by the court in the Walker-Keenan Case, so far as the opinion discloses. If that case is to be invoked now as foreclosing the consideration of that question of fact, and thereby inflicting upon the public what we regard as an illegal exaction, we prefer that the court which rendered the decision should assume the responsibility of making that application of it.

The defendants contend that the terminal charge is a reasonable one, and that if any part of the rate is wrong it is the charge for transportation from the point of origin to the point in Chicago where the cars leave their tracks. Abstractly this may be true, but in dealing with these

transportation problems the purpose is to reach practical justice. The Chicago rate is so much per hundred pounds, and would vary with the number of pounds contained in each car. This terminal charge is a definite amount per car. It would therefore be impossible to exactly offset the terminal charge by any corresponding reduction in the rate per hundred pounds. The terminal carrier at Chicago, as the case shows, receives and retains the entire amount of this terminal charge. Assuming, therefore, that this company was already compensated for this service, it now receives and retains just $1.00 too much per car. The only method by which absolute justice can be done is to compel the carrier to desist from exacting this sum. Surely the fact that the railroad company is already receiving pay for this service is good ground for holding that a second charge is unreasonable.

It is also said that since the imposition of this terminal charg
68 the Chicago rate has been reduced so that the total amount to-day, including the terminal charge, is much less than it was in 1894, when the charge was imposed. The case finds that such a reduction was made about October 1, 1896. That reduction did not, however, apply to all the territory to which the terminal charge applies, but only to certain limited portions of that territory, and the purpose of it was to equalize the rate from those sections as compared with other sections. There is no claim that this reduction was made on account of the imposition of the terminal charge, or that it would not have been made had no terminal charge been imposed, nor that if the Chicago rate, June 1, 1894, ought to have carried with it a delivery at the stock yards the present rate should not likewise do so.

It has been several times suggested in the discussion of this case that a railroad may divide its freight rate, charging one sum for the transportation and an additional sum for the delivery. Whatever of that nature has been said was in reliance upon the case of Walker v. Keenan and as applied to the particular case under consideration. It is by no means certain that such is at present the law. Upon the contrary, the Supreme Court of the United States has apparently declared that the carrier cannot segregate its rate in this manner. It ought perhaps to be said in this connection, without any reference to what the law may be, that we should deprecate the announcement of any such general doctrine as that foreshadowed in the opinion of the circuit court of appeals. Possibly, in theory, the most equitable manner of making up a freight rate is by imposing a terminal charge and adding to that a transportation charge. Perhaps, if some central rate-making power were to recast all the rates of this country, that might be the most desirable theory upon which to proceed, but in fact rates have been almost universally made the other way. Almost without exception the cost of receiving and delivering is included. To permit and invite carriers to impose in all cases these terminal charges would lead to endless friction between the carrier and the shipper, and to numerous exactions and discriminations by the imposition of such terminal charges. We think that, as a practical matter, the rate should include in one aggregate sum the receiving, transporting, and delivering. Of course, there are many instances where some service in addition to a delivery at the ordinary and regular station of the carrier is required, where such additional terminal charges not only may, but should, reasonably be made.

The original opinion intimates that the only logical conclusion from the reasoning there stated would be to allow each carrier to
69 retain whatever that particular carrier is obliged to pay the Union Stock Yards & Transit Company by way of this trackage charge. That would, however, result in compelling all companies to retain the smallest amount paid, since the terminal by all routes must be the same. We understood that in allowing $1.00 to be retained we were virtually giving to the carriers 20 cents upon each car, but in view of the fact that many of the defendants were compelled to pay $1.50 by way of trackage charge, this seemed, on the whole, reasonable. Upon the reargument, the defendants were inquired of whether they desired a modification of this order so that each one be allowed to retain the amount actually paid, and without exception they stated that they did not ask such a modification. Attention is called to this fact at this time for the purpose of showing that what is apparently an inconsistency in the conclusion of the Commission is really in favor of the defendants, and that the defendants do not for that reason desire to have that inconsistency removed.

The original opinion finds that a charge of more than $1.00 per car is in violation of the first and possibly the third section of the act. The complainant and the intervener request us to decide definitely whether or not there is a violation of the third section. In view of certain claims made by the defendants upon the argument for a rehearing we think that question should be further considered and ruled upon at this time.

The claim of the complainant, and especially of the intervener, was that a uniform terminal charge must be imposed at all these stock markets, and that inasmuch as the defendants absorbed the corresponding terminal charges at other stock markets, they must absorb this charge at Chicago. We held that this did not necessarily follow; that the carrier was free to a certain extent to absorb or not absorb, to make or not to make charges of this character according to the exigencies under which its business was conducted. The conclusion of the Commission upon that point was stated in the following words:

"We hold that if the imposition of this terminal charge at Chicago is just and reasonable, the fact that similar charges are not imposed by the defendants at the other competing stock markets referred to does not make this an undue preference under the third section."

We have decided, however, that to the extent of $1.00 the imposition of this terminal at Chicago is not just and reasonable, and the question now is, How does that leave the case as to the third section?

For many years previous to June 1, 1894, the defendants had
70 maintained a certain fixed relation in rates between these different cattle markets. On June 1st they increased the expense of placing cattle upon the Chicago market by just $2 per car. If the relative rates were right before, and we may fairly presume, in the absence of any claim to the contrary, that they were, this charge disturbed those rates to that extent. If the increase in the Chicago rate was justifiable no undue prejudice would be worked against Chicago. We have found that to the extent of $1.00 per car it was unjustifiable. It results, therefore, that the defendants have disturbed the just relation of rates between these different centers by imposing without reason or justification an additional charge upon the rate to Chicago.

There being no excuse for the imposition of this additional charge, we think it necessarily follows that an undue prejudice against the market of Chicago is thereby created. It is the want of justification which makes the preference undue.

In this connection it should be observed that it is immaterial whether the Chicago rate is increased by raising the entire rate or by imposing the terminal charge. The expense of marketing live stock at Chicago is unjustifiably made $1.00 per car greater in the case of that market, and to that extent arises an undue preference.

It should be further observed that the reduction in rates of October 1, 1896, applied equally to all these markets, so that the same discrimination against Chicago existed after the reduction as before; that is, the rate was still relatively $1.00 higher to Chicago than it had been previous to June 1, 1894, and than it should be.

As stated in the former report and opinion, the Illinois Central Railroad Company transfers from its lines to the Union Stock Yards over two routes, by one of which the trackage charge is 75 cents and by the other 40 cents each way. It appeared from the statement furnished by that company that there were certain other differences in the cost of transportation, making the cost via the 75-cent trackage route $2.23, and by the 40-cent trackage route $1.65, an average of $1.94, which was so stated.

Counsel for that company now call attention to the fact that, inasmuch as more live stock is carried over the 75-cent route than over the other, the actual average cost to that company is not $1.94, but is $1.997, per car.

This average cost is not probably material, but if given at all it should be correctly stated, and the findings of fact are modified accordingly.

The petition for a rehearing is dismissed, and an order will issue in conformity with this and the original opinion.

71 EXHIBIT F.

At a general session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 4th day of August, A. D. 1898.

Present: Hon. Martin A. Knapp, chairman; Hon. Judson C. Clements, Hon. James D. Yeomans, Hon. Charles A. Prouty, and Hon. William J. Calhoun.

CATTLE-RAISERS' ASSOCIATION OF TEXAS
v.
FORT WORTH AND DENVER CITY RAILWAY Company et al.

An order based on the report and opinion of the Commission herein having been issued on the 20th day of January, 1898, and petitions for a rehearing of this case having been filed by the Chicago and Northwestern Railway Company and other defendant carriers, to whom the said order was directed, and the Commission having on March 7, 1898, suspended the said order of January 20, 1898, pending determination of the questions raised in said petitions, and a hearing on said petitions for rehearing having been had in the city of Chicago on the 1st day of April,

1898, and the Commission having, on the date hereof, made and filed a report containing its opinion on said petitions:

It is ordered that said petitions for rehearing be, and the same are hereby, dismissed, and that the defendants, The Atchison, Topeka and Santa Fe Railway Company, The Chicago, Rock Island and Pacific Railway Company, The Chicago and Alton Railroad Company, The Chicago, Burlington and Quincy Railroad Company, The Chicago and Northwestern Railway Company, The Chicago, Milwaukee and St. Paul Railway Company, The Chicago Great Western Railway Company, The Illinois Central Railroad Company, and The Wabash Railroad Company be, and they severally are, hereby directed to comply with the requirements of said order of January 20, 1898, on or before the 15th day of September, 1898.

A true copy.

Secretary.

OFFICE OF THE INTERSTATE COMMERCE COMMISSION,
Washington, D. C.,

I, Edward A. Moseley, secretary of the Interstate Commerce Commission, hereby certify that the foregoing exhibits, six in number,
72 and marked A to F, both inclusive, are correct copies of the originals thereof on file among the records of the Interstate Commerce Commission.

In testimony whereof I hereunto set my hand and affix the seal of the said Interstate Commerce Commission, at the city of Washington, in the District of Columbia, this 16th day of February, 1899.

[L. S.]

EDW. A. MOSELY,
Secretary of the Interstate Commerce Commission.

(Endorsed). Filed Mar. 3, 1899. S. W. Burnham, clerk.

And on the same day, to wit, the 3rd day of March, 1899, being one of the days of the December term of said court, 1898, in the record of proceedings thereof in said entitled cause before Hon. William H. Seaman, district judge, appears the following entry, to wit:

Order.

Circuit court of the United States, northern district of Illinois, northern division.

FRIDAY, *March 3, 1899.*

Present, Hon. William H. Seaman, district judge.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON AND QUINCY Railroad Company, et al. } 25,101.

And now, upon the filing of the petition and accompanying motion herein, it is hereby ordered that the secretary of the Interstate Commerce Commission be, and is hereby, authorized, to make service of said petition and accompanying motion, and this order, by registering and

depositing in the mails of the United States true copies thereof, duly authenticated under the seal of said Interstate Commerce Commis-
73 sion, correctly addressed to the said defendants who are natural persons, or to the president or one of the vice-presidents or the secretary of each of the corporate defendants.

It is also hereby ordered that each of the said defendants, respectively, file their answers to said petition on or before March 20, 1899, and also appear before the court here on the 20th day of March, 1899, and show cause why such other and further preliminary orders as to the court may seem meet should not be entered in this cause to speed the same to final hearing.

Afterwards, to wit, on the 20th day of March, 1899, there was filed in the office of the clerk of said court the demurrers of said defendants in the following words and figures, to wit:

UNITED STATES OF AMERICA,
Northern Dist. of Ill., Northern Division, ss:

In the circuit court thereof.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO, BURLINGTON & QUINCY Railroad Company et al. } 25101.

The demurrer of the Chicago, Burlington & Quincy Railroad Company, defendant, to the complaint of the Interstate Commerce Commission, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said complaint, and for cause of demur shows that the complainant has not in and by its said complaint made or stated such a cause as entitles it in the court of equity to any discovery or relief from or against this defendant touching the matters contained in the said complaint or any of said matters.

Wherefore, and for divers other good causes of demur appearing in the said complaint, this defendant demurs to the said complaint and to all the matters and things therein contained, and prays the judgment to
74 this honorable court whether it shall be compelled to make any further or other answer to the said complaint, and it prays to be dismissed with reasonable costs in this behalf sustained.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,
By CHESTER M. DAWES,
Its Solicitor.

I certify that in my opinion the foregoing demurrer of the Chicago, Burlington and Quincy Railroad Company, defendant, to the complaint of the Interstate Commerce Commission, complainant, is well founded in law and proper to be filed in the above cause.

CHESTER M. DAWES,
Solicitor for Defdt.

UNITED STATES OF AMERICA,
Northern Dist. of Ill., Northern Division, ss:

Thos. Miller, being duly sworn, on oath says that he is the general freight agent of the Chicago, Burlington & Quincy Railroad Company, defendant; that he has heard read the foregoing demurrer to the complaint of the Interstate Commerce Commission in this cause and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

THOS. MILLER.

Subscribed and sworn to before me this 20th day of March, 1899.
[SEAL.]
HERBERT HAASE,
Notary Public.

(Endorsed:) Filed March 20, 1899. S. W. Burnham.

75 In the circuit court of the United States for the northern district of Illinois.

THE INTERSTATE COMMERCE COMMISSION
v.
THE CHICAGO, BURLINGTON & QUINCY RAILroad Company; the Chicago Great Wesern Railway Company; the Chicago & North-Western Railway Company; the Chicago, Milwaukee & St. Paul Railway Company; the Chicago & Alton Railroad Company; the Chicago, Rock Island & Pacific Railway Company; the Atchison, Topeka & Santa Fe Railway Company; the Wabash Railroad Company; the Illinois Central Rail road Company.

The defendant, the Chicago Great Western Railway Company, severing from the other companies defendants herein, by protestation, not confessing or acknowledging all or any of the matters or things in said bill of complaint contained to be true in said manner and form as therein set forth and alleged, demurs to said bill, and for cause of demurrer shows.

1. That it appears by the plaintiff's own showing by the said bill that it is not entitled to the relief prayed by the bill against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in said bill, this defendant demurs thereto and prays the judgment of this honorable court whether it shall be required to make any answer to said bill, and humbly prays to be hence dismissed with its reasonable costs in this behalf sustained.

FRANK B. KELLOGG,
Solicitor & Counsel for Defendant,
Chicago Great Western Ry. Co.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

FRANK B. KELLOGG, *Counsel.*

76 STATE OF MINNESOTA, *County of Ramsey, ss.*

S. C. Stickney being duly sworn on his oath says, that he is the general manager of the defendant, Chicago Great Western Railway Company, one of the defendants in the above-mentioned action. That the foregoing demurrer is not interposed for delay.

S. C. STICKNEY.

Subscribed and sworn to before me this 17th day of March, A. D. 1899.

[SEAL.] C. W. G. WITBEE,
Notary Public, Ramsey County, Minn.

(Endorsed:) Filed March 20, 1899. S. W. Burnham, clerk.

In the circuit court of the United States for the northern district of Illinois.

INTERSTATE COMMERCE COMMISSION
v.
THE CHICAGO, BURLINGTON & QUINCY Railroad Company and others, including the Chicago & North-Western Railway Company.

The demurrer of the above-named defendant, the Chicago and North-Western Railway Company, to the petition of the Interstate Commerce Commission in the above-entitled proceeding.

This defendant, the Chicago & North-Western Railway Company, by protestation, not confessing or acknowledging all or any of the matters or things in the said petition contained to be true, in such manner and form as the same are herein set forth and alleged, doth demur to the said petition. And for causes of demurrer showeth that it appeareth by petitioner's own showing by the said petition that it is not entitled to the relief prayed by the petition against this defendant.

Wherefore, and for divers other good causes of demurrer appearing on the said petition, this defendant doth demur thereto. And it prays the judgment of this honorable court whether it shall be compelled
77 to make any answer to the said petition; and it humbly prays to be hence dismissed with its reasonable costs in this behalf sustained.

[CORPORATE SEAL.] CHICAGO & NORTH-WESTERN RAILWAY COMPANY,
By H. R. MCCULLOUGH,
Third Vice-President and General Traffic Manager.

Attest:

JOSEPH B. REDFIELD,
Assistant Secretary.

LLOYD W. BOWERS,
Solicitor, and of Counsel for Defendant Chicago & North-Western Railway Company, 22 Fifth avenue, Chicago, Ill.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

LLOYD W. BOWERS,
Of Counsel for Defendant Chicago & North-Western Railway Company.

Chicago, Ill., March 20th, 1899.

STATE OF ILLINOIS, *County of Cook, ss:*

H. R. McCullough, being duly sworn, deposes and says: I am general traffic manager of the Chicago & North-Western Railway Company, a corporation and the defendant which interposes the foregoing demurrer, and that said demurrer is not interposed for delay.

H. R. McCULLOUGH.

Sworn to before me this twentieth day of March, 1899.

[NOTARIAL SEAL.] J. R. GUILLIAMS,
Notary Public, Cook County, Illinois.

(Endorsed:) Filed March 20, 1899. S. W. Burnham, clerk.

78 In the circuit court of the United States for the northern district of Illinois, northern division.

THE INTERSTATE COMMERCE COMMISSION, complainant, *vs.* THE CHICAGO, BURLINGTON & QUINCY RAILroad Company; The Chicago Great Western Railway Company; The Chicago and North-Western Railway Company; The Chicago, Milwaukee and St. Paul Railway Company; The Chicago and Alton Railroad Company; The Chicago, Rock Island and Pacific Railway Company; The Atchison, Topeka and Santa Fe Railway Company; The Wabash Railroad Company; The Illinois Central Railroad Company, defendants.	In chancery.	25101.

The demurrer of the Chicago, Milwaukee & St. Paul Railway Company, one of the above-named defendants, to the bill of complaint of the above-named plaintiff, the Interstate Commerce Commission:

This defendant, by protestation, not confessing all or any of the matters and things in the said bill of complaint contained to be true, in such manner and form as the same are therein set forth and alleged doth separately demur to said bill, and for cause of demurrer saith:

That said plaintiff hath not, in and by its said bill, made or stated such a case as entitles it, in a court of equity, to any relief against this defendant as to the matters contained in the said bill, or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth separately demur thereto, and it humbly demands the judgment of this court whether it shall be compelled to make any further or other answer to the said bill; and it prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

CHAS. B. KEELER,
Solicitor for said Defendant Chicago, Milwaukee & St. Paul Ry. Co.

79 I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

GEO. R. PECK,
Of Counsel for said Defendant.

STATE OF ILLINOIS, *County of Cook, ss:*

I, A. J. Earling, being first duly sworn, on oath depose and say that I am an officer of the Chicago, Milwaukee and St. Paul Railway Company (a corporation), one of the defendants in the above-mentioned suit, to wit, its second vice-president, and as such officer I am authorized to and do make this affidavit for and on behalf of said defendant, and I further say that the foregoing demurrer is not interposed for delay.

A. J. EARLING.

Subscribed and sworn to before me on this 18th day of March, A. D. 1899.

[SEAL.] W. D. MILLARD,
Notary Public, Cook County, Ill.

(Endorsed:) Filed Mar. 20, 1899. S. W. Burnham, clerk.

80 In the circuit court of the United States for the northern district of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON AND QUINCY RAILROAD Company; the Chicago Great Western Railway Company; the Chicago and North-Western Railway Company; the Chicago, Milwaukee and St. Paul Railway Company; the Chicago and Alton Railroad Company; the Chicago, Rock Island and Pacific Railway Company; the Atchison, Topeka and Santa Fe Railway Company; the Wabash Railroad Company; the Illinois Central Railroad Company.

The demurrer of the Chicago and Alton Railroad Company, one of the defendants to the petition of the Interstate Commerce Commission, petitioner.

This defendant by protestation not confessing or acknowledging all or any of the matters and things in the said petition to be true, in such manner and form as the same are herein and thereby set forth and alleged, doth demur thereto, and for cause of demurrer shows that the said petitioner hath not by said petition made such a case as entitled it to any relief from or against this defendant touching the matters contained in the said petition, or any of such matters. Wherefore, and for divers other good causes of demurrer appearing in the said petition, this defendant demurs to the said petition and to all the matters and things therein contained, and humbly prays the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said petition; and it prays to be hence dismissed with its reasonable costs in this behalf sustained.

CHICAGO & ALTON RAILROAD COMPANY,
By WM. BROWN, *Its Solicitor.*

I certify that, in my opinion, the foregoing demurrer of the Chicago and Alton Railroad Company, defendant to the petition of the Interstate

Commerce Commission, is well founded in law and proper to be filed in the above cause.

WM. BROWN,
Solicitor for Respondent Chicago & Alton Railroad Co.

81 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

William Brown, being duly sworn, deposes and says that he is the general solicitor of the Chicago and Alton Railroad Company, defendant, and as such has charge and direction of its entire legal business; that he has read the foregoing demurrer to the petition in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

WM. BROWN.

Subscribed and sworn to by the said William Brown before me this 16th day of March, A. D. 1899.

[SEAL.] FRANK G. OFFENLOCK,
Notary Public.

(Endorsed:) Filed Mar. 20, 1899. S. W. Burnham, clerk.

82 UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the circuit court of the United States for the northern district of Illinois, northern division.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY; The Chicago Great Western Railway Company; The Chicago and Northwestern Railway Company; The Chicago, Milwaukee and St. Paul Railway Company; The Chicago and Alton Railroad Company; The Chicago, Rock Island and Pacific Railway Company; The Atchison, Topeka and Santa Fe Railway Company; The Wabash Railroad Company; The Illinois Central Railroad Company. } In equity. 25101.

The separate demurrer of the defendant, The Chicago, Rock Island and Pacific Railway Company, to the bill of complaint or petition herein.

The defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's bill of complaint or petition contained to be true, in such manner and form as the same are therein set forth and alleged, demurs thereto; and for cause of demurrer shows to the court that the said complainant has not, in and by its said bill of complaint or petition, made or stated any such cause as does or ought to entitle it to any such relief as is thereby sought and prayed for from or against this defendant.

Wherefore this defendant demands the judgment of this honorable court whether it shall be compelled to make any further or other
83 answer to said bill of complaint or petition or any of the matters and things therein contained; and prays to be hence dismissed, with its reasonable costs in this behalf sustained.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY.
By ROBT. MATHER and W. T. RANKIN,
Its Solicitors.

ROBT. MATHER, *Of Counsel.*

STATE OF ILLINOIS, *County of Cook, ss:*

H. A. Parker, being first duly sworn, upon oath deposes and says that he is the vice-president of the Chicago, Rock Island and Pacific Railway Company, defendant in the above-entitled cause, and that the foregoing demurrer is not interposed for delay.

H. A. PARKER.

Subscribed and sworn to before me this 15th day of March, 1899.

[SEAL.] CHARLES T. SCHWARTZ,
Notary Public, Cook County.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

(Endorsed:) Filed March 20, 1899. S. W. Burnham, clerk.

ROBT. MATHER, *Counsel.*

84 In the circuit court of the United States, for the northern district of Illinois, northern division.

THE INTERSTATE COMMERCE COMMISSION *versus* THE CHICAGO, BURLINGTON & QUINCY RAILway Company, The Chicago Great Western Railway Company, The Chicago and North-Western Railway Company, The Chicago, Milwaukee & St. Paul Railway Company, The Chicago & Alton Railroad Company, The Chicago, Rock Island & Pacific Railway Company, The Atchison, Topeka & Santa Fe Railway Company, The Wabash Railroad Company, The Illinois Central Railroad Company.	In equity. 25101.

The separate demurrer of the Atchison, Topeka & Santa Fe Railway Company to the bill of complaint of the Interstate Commerce Commission, the above-named complainant.

This defendant, the Atchison, Topeka & Santa Fe Railway Company, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth that the plaintiff hath not, in and by its

said bill or petition, made or stated such a case as entitles it in a court of equity to any discovery from this defendant or to any relief against it as to the matters contained in the said bill or petition, or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in the said bill or petition, this defendant doth demur thereto and humbly demands the judgment of this court whether it shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

ROBERT DUNLAP,
Solicitor for the Atchison, Topeka & Santa Fe Railway Company.

E. D. KENNA, *Counsel.*

85 I, the undersigned, counsel for The Atchison, Topeka and Santa Fe Railway Company, hereby certify that in my opinion the above and foregoing demurrer is well founded in point of law.

E. D. KENNA, *Counsel.*

STATE OF ILLINOIS, *County of Cook, ss:*

E. P. Ripley, of lawful age, being first duly sworn, on oath deposes and says that he is the president of The Atchison, Topeka and Santa Fe Railway Company, one of the defendants in the foregoing cause, and that he is cognizant with the matters and things complained of, and he says that the above demurrer is not interposed for delay.

E. P. RIPLEY.

Sworn to before me and subscribed in my presence, this 18th day of March, 1899.

[SEAL.] G. A. DOBBIN,
Notary Public.

My commission expires July 25th, 1902.

(Endorsed:) Filed Mch. 20, 1899. S. W. Burnham, clerk.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the circuit court of the United States for the northern district of Illinois, northern division.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WABASH RAILROAD COMPANY ET ALS. } In equity.

The separate demurrer of the defendant, the Wabash Railroad Company, to the bill of complaint or petition herein.

The defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's bill of complaint
86 or petition contained to be true in such manner and *from* as the same are therein set forth and alleged, demurs thereto; and for cause of demurrer shows to the court that the said complainant has not in and by its said bill of complaint or petition made or stated any such

cause as does or ought to entitle it to any such relief as is thereby sought and prayed for from or against this defendant.

Wherefore this defendant demands a judgment of this honorable court whether it shall be compelled to make any further or other answer to said bill of complaint or petition, or any of the matters and things therein contained; and prays to be hence dismissed with its reasonable costs in this behalf sustained.

THE WABASH RAILROAD COMPANY,
By W. H. BLODGETT and GEO. B. BENNETT,
Its solicitors.

STATE OF ILLINOIS, *County of Cook, ss:*

B. C. Winston, being first duly sworn, upon oath deposes and says that he is the agent and attorney of the Wabash Railroad Company, defendant in the above-entitled cause and that the foregoing demurrer is not interposed for delay.

B. C. WINSTON.

Subscribed and sworn to before me this 20th day of March, 1899.

[SEAL.] CHARLES T. SCHWARTZ,
Notary Public.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

W. H. BLODGETT.
GEO. B. BENNETT.

(Endorsed:) Filed Mar. 20, 1899. S. W. Burnham, clerk.

87 In the circuit court of the United States for the northern district of Illinois. October term, A. D. 1898.

THE INTERSTATE COMMERCE COMMISSION
versus
THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY et al. } In equity. 25101.

The demurrer of the Illinois Central Railroad Company, one of the said defendants, to the petition of said Interstate Commerce Commission.

This defendant, said Illinois Central Railroad Company, demurs to the said petition, and for cause of demurrer shows that the petitioner has not, in and by said petition, made or stated such a case as entitles it, in a court of equity, to any discovery or relief from or against this defendant touching the matters contained in the said petition, or any such matters.

Wherefore, this defendant demurs to the said petition, and to all the matters and things therein contained, and prays the judgment of this honorable court whether it shall be compelled to make any further or other answer thereto, and prays to be dismissed with its reasonable costs in this behalf sustained.

SIDNEY A. ANDREWS,
Solicitor for said Defendant.

I certify that, in my opinion, the foregoing demurrer of the Illinois Central Railroad Company to the petition of the Interstate Commerce Commission is well founded in law, and proper to be filed in the above cause.

SIDNEY F. ANDREWS,
Solicitor for said Defendant.

UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

makes oath and says that he is the of said defendant, the Illinois Central Railroad Company; that he has read the foregoing demurrer to the petition of the Interstate Commerce
88 Commission in this suit, and that the same is not interposed for the purpose of delaying the said suit or any proceedings therein.

ILLINOIS CENTRAL R. R. CO.,
J. C. WILLING, *Vice-Pres.*

Subscribed and sworn to before me this 20th day of March, A. D. 1899.

EDWARD P. SKENE,
Notary Public.

(Endorsed:) Filed March 20, 1899. S. W. Burnham, clerk.

Afterwards, to wit, on the 1st day of May, 1899, being one of the days of the May adjourned term of said court, in the record of proceedings thereof of said entitled cause before Hon. Christian C. Kohlsaat, district judge, appears the following entry, to wit:

Order.

Circuit court of the United States, northern district of Illinois, northern division.

MONDAY, *May 1, 1899.*

Present, Hon. Christian C. Kohlsaat, district judge.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY et al. } 25101.

Now come the parties by their solicitors. Now comes on to be heard the demurrers of each and every of the defendants to the bill of complaint.

The court, after hearing the arguments of counsel in part, and the hour of adjournment having arrived, postpones the further consideration of this matter until to-morrow morning at ten a. m.

89 Afterwards, to wit, on the 2nd day of May, 1899, being one of the days of the May adjourned term of said court, in the record of proceedings thereof in said entitled cause before Hon. Christian C. Kohlsaat, district judge, appears the following entry, to wit:

Order.

Circuit court of the United States, northern district of Illinois, northern division.

TUESDAY, *May 2, 1899.*

Present, Hon. Christian C. Kohlsaat, district judge.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO, BURLINGTON AND QUINCY Railroad Company et al. } 25101.

Now come the parties by their solicitors. Now this cause comes on to be further heard on the demurrers of defendants to the bill of complaint. The court, after hearing the arguments of counsel in part and the hour of adjournment having arrived, postpones the further hearing of this matter until to-morrow morning.

Afterwards, to wit, on the 3rd day of May, 1899, being one of the days of the May adjourned term of said court, in the record of proceedings thereof in said entitled cause before Hon. Christian C. Kohlsaat, district judge, appears the following entry, to wit:

90

Order.

Circuit court of the United States, northern district of Illinois, northern division.

WEDNESDAY, *May 3, 1899.*

Present, Hon. Christian C. Kohlsaat, district judge.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO, BURLINGTON AND QUINCY Railroad Company et al. } 15101.

Now come the parties, by their solicitors, and now again come on to be heard the demurrers of the defendants to the bill of complaint herein. The court, after hearing the arguments of counsel to conclusion, takes the matter under advisement.

Afterwards, to wit, on the 9th day of May, 1899, being one of the days of the May adjourned term of said court, in the record of proceedings thereof in said entitled cause before Hon. Christian C. Kohlsaat, district judge, appears the following entry, to wit:

Order.

Circuit court of the United States, northern district of Illinois, northern division.

TUESDAY, *May 9, 1899.*

Present, Hon. Christian C. Kohlsaat, district judge.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO, BURLINGTON AND QUINCY Railroad Company et al. } 25101.

The court, having considered and being now fully advised in the

91 premises, orders that the demurrers of each and all of the defendants be and the same are hereby overruled. The defendants are ruled to answer the bill of complaint within thirty days from this date.

And afterwards, to wit, on the 8th day of June, 1899, there was filed in the office of the clerk of said court the answers of the said defendants in the words and figures following, to wit:

UNITED STATES OF AMERICA, }
Northern District of Illinois. }

In the circuit court of the United States in and for the northern district of Illinois.

THE INTERSTATE COMMERCE COMMISSION, petitioner, *vs.* THE CHICAGO, BURLINGTON AND QUINCY Railroad Company et al., defendants. } No. 25101.

The separate answer of the Chicago, Burlington and Quincy Railroad Company, one of the defendants in the above-entitled proceeding, to the petition of the Interstate Commerce Commission therein.

This defendant, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception or other objection that can or may be had or taken to the many errors, uncertainties, and other imperfection in the said petition contained, for answer thereunto or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says:

1. It admits the allegations of the paragraphs of the petition numbered 1, 2, and 3.

2. This defendant admits that it filed with the Interstate Commerce Commission an answer by it to said petition of the Cattle Raisers' Association of Texas, a copy of which answer, marked "Exhibit 1," is hereto attached and made a part hereof; and that it also filed with said Commission an answer by it to said intervening petition of the Chicago Live Stock Exchange, a copy of which answer, marked "Exhibit 2," is hereto attached and made part hereof.

92 This defendant further admits that the said proceeding before the Interstate Commerce Commission came on for investigation and hearing as in said petition herein averred, and that afterwards the said Commission made a report in writing in respect thereof which included certain findings of fact; but this defendant denies that the effect of said report and findings of fact is as set forth in paragraph 4 of the petition herein, and this defendant, on the contrary, avers that said report and findings of fact were such only as appear from the original thereof now on file in the office of said Interstate Commerce Commission; but this defendant admits that said report and findings of fact are correctly set forth in the copy thereof marked "Exhibit C," attached to the petition herein.

This defendant further admits that the said Commission formulated an order and notice which are correctly set forth in the copy thereof, marked

"Exhibit D," attached to the petition herein, but this defendant avers that said order and notice have only such force and effect as are given to the same by law, and this defendant denies that said order was or is a lawful order or requirement. This defendant admits that copies of the said report and findings of fact and of the said order and notice of the said Commission were duly delivered to this defendant.

This defendant further admits that it petitioned the said Commission for reargument of said matter, but avers that the scope and purpose of its said petition for a reargument were such only as appear on the face thereof, and are shown by the copy of said petition for reargument, marked "Exhibit 3," and attached hereto as a part hereof. This defendant admits that arguments were had on said petition for reargument and that thereupon said Commission modified its report and findings of fact, which said modification this defendant admits are correctly set forth in "Exhibit E" to the petition herein. This defendant further admits that the Commission thereupon formulated a further order and notice, a copy of which is correctly set forth in "Exhibit F" attached to the petition herein, and that copies thereof were delivered to this defendant, but this defendant denies that said order or notice was or is a lawful order or requirement. This defendant admits that it has refused to obey said orders of said Commission, and each of them.

3. This defendant denies that said charge of two dollars per car made by it upon carloads of live stock delivered at the Union Stock Yards in Chicago has been or is unreasonable, unjust, or unlawful, or that said charge has been or is excessive in amount, or that said charge or the aggregate charges of defendant for transportation of live stock from any place to the Union Stock Yards at Chicago have been or are to any extent unjust or unreasonable in themselves, or relatively to transportation charges on live stock to
93 destinations other than Chicago; or that said two-dollar charge or the aggregate charges of defendant for the transportation of live stock from any place to the Union Stock Yards at Chicago have been or are an unjust discrimination against Chicago in comparison with any other destination of live-stock shipments, or against shippers of live stock to Chicago in comparison with shippers of live stock to any other destination, or against receivers of live stock at Chicago in comparison with receivers of live stock at any other destination, or against the live-stock traffic in comparison with any other description of traffic; and this defendant denies that while imposing said two-dollar charge at all it has omitted to charge it to any one whomsoever for a like and contemporaneous service, and this defendant alleges that said charge has been made uniformly and alike upon all shipments of live stock to the Union Stock Yards at Chicago ever since the charge was first imposed in 1894; and this defendant denies that in imposing said two-dollar charge it has at any time subjected any person, company, firm, corporation, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, or has at any time made or given to any person, company, firm, corporation, locality, or description of traffic any undue or unreasonable preference or advantage; and this defendant denies that by making said two-dollar charge on live stock delivered at the Union Stock Yards at Chicago it

has violated or does violate section 1 or section 2 or section 3 or any other section of the interstate commerce act.

4. The defendant alleges that it neither has owned or controlled nor does own or control any line of railroad to or terminating at the Union Stock Yards of the Union Stock Yards & Transit Company in the city of Chicago, but it states that in order to conveniently and cheaply reach said stock yards it is obliged to make use of the tracks of the Pittsburg, Cincinnati, Chicago & St. Louis Railroad Co. from a connection with the tracks of this defendant near Rockwell street in the city of Chicago to Brighton *Bark*, and from Brighton *Pork* it makes use of the tracks of the Union Stock Yards & Transit Co. to said Union Stock Yards, and that returning from said stock yards to the connection with the tracks of this defendant at 18th street this defendant is obliged to make use of the tracks of the Union Stock Yards & Transit Co. This defendant has no means of reaching the Union Stock Yards over its own tracks; that this defendant is obliged to pay and does pay to said Pittsburg, Cincinnati, Chicago & St. Louis Railroad Co. the sum of twenty-five (25c.) cents on each car of live stock transported from its said connection at Rockwell street to said Brighton Park, and the further sum of
94 forty (40c.) cents to said Union Stock Yards & Transit Co. upon each car of live stock transported over the tracks of the said Union Stock Yards & Transit Company from Brighton Park to said stock yards, and the sum of seventy-five (75c.) cents to said Union Stock Yards & Transit Co. for transportation for each car of live stock from said stock yards to the connection of this defendant's track at 18th street on the return trip; that said charges were on June 1st, 1894, imposed by said Union Stock Yards & Transit Co. for the use of its tracks as aforesaid, and that ever since said date this defendant, in order to reach said Union Stock Yards or to deliver stock at said stock yards and to get back its empty cars, has been obliged to pay to said stock yards company said charges as aforesaid, amounting to one dollar and fifteen cents ($1.15) and the additional sum of twenty-five (25c.) cents to said Pittsburg, Cincinnati, Chicago & St. Louis Railroad Company, making a total sum of one dollar and forty cents ($1.40) on each car of live stock delivered at said stock yards, which said charge and expense is in addition to the charge at all times imposed of twenty-five cents (25c.) per car for unloading live stock at said stock yards; that in addition to paying the total of one dollar and sixty-five cents ($1.65) per car for the aforesaid charges of the Union Stock Yard & Transit Company, it costs and has, since June 1st, 1894, cost this defendant the further expense of the actual transportation work for each car of live stock delivered at the Union Stock Yards in hauling the same to said stock yards, and that the total cost to this defendant of such service in hauling live-stock cars to said stock yards and delivering them thereat is and at all times since June 1st, 1894, has been in excess of two dollars per car; that the rates for transportation of live stock to Chicago had for many years before June 1st, 1894, been steadily declining and had at that date become very low, and that since June 1st, 1894, for numerous reasons, including strenuous and diversified competition, a farther decline has taken place in defendant's rates for the transportation of live stock to Chicago from a great portion of the places of shipment from which

live stock is hauled over this defendant's line to Chicago, such decline since June 1st, 1894, in the rates for transportation of live stock to Chicago (wholly apart from said two-dollar charge) amounting to more than two dollars per carload; that the places from which the rates to Chicago elsewhere than at said stock yards, and not including said two-dollar charge for delivery at the stock yards, have so declined embrace a great part of the territory concerning shipments from which complaint is made in this proceeding; that on June 1st, 1894, when said rental charges were first imposed, as aforesaid, by the Union Stock Yards & Transit
95 Company, this defendant believed, and the fact was, that its stock rates to Chicago were already so low as not to be a reasonable and sufficient compensation to defendant for the service performed in transporting live-stock to said Union Stock Yards and that defendant's said live stock rates were at least two dollars lower than would be reasonable for such transportation to the said Union Stock Yards; that it thereupon made, printed, filed with the Interstate Commerce Commission, and duly published and posted in two public and conspicuous places in every depot, station, or office of this defendant where freight was received for transportation, in such form that it should be accessible to the public and could be conveniently inspected, and has ever since kept on file and duly published and posted a tariff concerning its charges for transportation of live stock to the Union Stock Yards in Chicago or elsewhere in Chicago, wherein and whereby it was and is announced to the public that defendant's charges thereafter for transportation of live stock to the Union Stock Yards at Chicago would be two dollars per carload more than the ordinary live-stock rates to Chicago, and that for such ordinary live-stock rate to Chicago defendant would not transport live stock to said Union Stock Yards and deliver it thereat; that since June 1st, 1894, the ordinary or flat Chicago live-stock rate has not been made for live stock to be transported to and delivered at said stock yards, and it has been distinctly declared by the tariffs of this defendant that said ordinary or flat live-stock rate to Chicago was not imposed for and did not include any service in transporting live stock over the tracks of the Union Stock Yards & Transit Company to said stock yards or delivering stock at such yards; that said charge of two dollars per car made by defendant since June 1st, 1894, on live stock transported to the Union Stock Yards has been made and is made only for the service of transporting from the aforesaid junction of this defendant's road to said Union Stock Yards and for delivery at said yards, and that no other charge than said two dollar charge has at any time been made or is made by this defendant for any portion of said service in transporting live stock from the aforesaid junction of this defendant's road with the tracks of the Union Stock Yards & Transit Company to said stock yards and delivery at said yards.

5. This defendant denies that it has at any time in the last ten years *has* had any ownership of or interest in the Union Stock Yards & Transit Company or its railroad or other property.

6. This defendant alleges that much the greater part of the shipments of live stock over its road to Chicago, either at said Union Stock
96 Yards or elsewhere in that city, has, since June 1, 1894, consisted and still does consist of shipments from places not upon the road

of this defendant but upon other connecting lines of railroad, and has been carried and still is carried to Chicago upon a joint rate made by this defendant with a connecting carrier or carriers over whose road or roads the shipment travels, and that such joint rate for such shipments has been and is shared by this defendant with such other connecting carrier or carriers upon agreed percentages, but said two dollar terminal charge imposed for the transportation of live stock from the aforesaid junction of this defendant's road with the tracks of the Union Stock Yards & Transit Company in Chicago to said Union Stock Yards has been made and is made solely by this defendant, and not jointly with any connecting carrier, and has been at all times and is received solely and wholly by this defendant, being compensation to this defendant for the service aforesaid of transporting over the tracks of the Union Stock Yards & Transit Company to said stock yards and delivery at said stock yards of such live stock, which at all times has been performed and is still performed solely and entirely by this defendant; and this defendant alleges that any reduction of said two dollar charge must and will fall wholly upon this defendant, while any reduction of the general or flat live-stock rate to Chicago must and would, in the case of all shipments made over the connecting roads of this defendant and a connecting carri or carriers, fall upon all such connecting carriers and be shared by them in the proportion of their percentages in the joint rate to Chicago.

7. This defendant alleges that heretofore, to wit, some time in the year 1895, the property of the Atchison, Topeka & Santa Fe Railroad Company, being the predecessor of the Atchison, Topeka & Santa Fe Railway Company, one of the defendants herein, was in the hands of receivers of the United States circuit court for the northern district of Illinois, and that in or about said year 1895 the members of said Chicago Live Stock Exchange, which filed intervening petition, as aforesaid, in this proceeding before the Interstate Commerce Commission, did petition said United States circuit court for an order directing its receivers, who were in possession and in charge of the operation of the railway of said Atchison, Topeka & Santa Fe Railroad Company, to discontinue the making of said two dollar terminal charge upon live stock delivered to said Union Stock Yards, and did in their said petition to said circuit court allege all the facts set forth in the petition of the Chicago Live Stock Exchange attached to the petition herein as "Exhibit B;" that the said Atchison, Topeka & Santa Fe Railroad Company and the receivers thereof answered said petition, and said
97 United States circuit court then and there acquired and had jurisdiction of the parties to said petition and of the subject-matter thereof; that a trial was had upon said petition and answer and the facts proven which were the same facts that are set forth herein, and such proceedings were had by and before said United States circuit court for the northern district of Illinois and by and before the United States circuit court of appeals for the seventh circuit that said United States circuit court of appeals duly adjudged and decreed that the said Atchison, Topeka & Santa Fe Railroad Company and its receivers had a right under the tariffs of said company which were identical with the tariffs made by this defendant as aforesaid concerning the imposition of

said terminal charge, after June 1st, 1894, and under the facts appearing to said United States circuit court of appeals, which were the same as the facts herein presented, to impose said two-dollar terminal charge, and judgment was duly entered and given in said matter in favor of said Atchison, Topeka & Santa Fe Railroad Company and its receivers; that this defendant hereby refers for greater certainty to all the records and proceedings in the matter of said petition of the members of the Chicago Live Stock Exchange to said United States circuit court for the northern district of Illinois both in said United States circuit court for the northern district of Illinois and in said United States circuit court of appeals for the seventh circuit, and asks leave to make such records and proceedings a part hereof and to have them so considered; and that said judgment of the United States circuit court of appeals in said matter is an adjudication that this defendant has a right to impose the said two-dollar terminal charge in addition to its ordinary charge for hauling live stock to the city of Chicago for delivery elsewhere than at said Union Stock Yards.

8. This defendant repeats here, as if now specifically stated, each and all of its allegations and denials contained in its answer to the original petition or complaint before the Interstate Commerce Commission in this proceeding, of which answer a copy, marked "Exhibit 1," is attached, as already hereinbefore stated, and is made a part hereof.

9. This defendant prays the same benefit as if it had demurred to the said petition herein, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,
By GEORGE HARRIS, *Vice-President.*

CHESTER M. DAWES,
Solicitor for C., B. & Q. R. R. Co.

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EXHIBIT 1.

Before the Interstate Commerce Commission.

THE CATTLE RAISERS' ASSOCIATION OF TEXAS
vs.
THE FORT WORTH & DENVER CITY RAILROAD Company et als.

The answer of the Chicago, Burlington & Quincy Railroad Company, defendant herein.

Now comes the Chicago, Burlington & Quincy Railroad Company, and for answer unto said complaint says:

1. As to the averments in section one of said complaint this defendant is unadvised, and asks that the complainants make strict proof of the matters therein contained.

As to the averments in section two of said complaint, this defendant admits that it is a common carrier of property, as therein alleged, through some of the States as therein enumerated; but as to whether the said Union Stock Yards and Transit Company is a common carrier it is unadvised; and on information and belief states that said Union Stock

Yards and Transit Company is not a common carrier, as in said section alleged, or subject to the provisions of the act of Congress entitled "An act to regulate commerce."

3. As to the averments in section 3 of said complaint, this defendant is informed and believes that the said Union Stock Yards & Transit Company owns, and for many years has owned, yards, pens, chutes, and railway approaches thereto, in the city of Chicago, for the reception and delivery of live stock; but denies that this defendant has held out said Union Stock Yards as its live-stock depot or station in Chicago; and further denies that live stock shipped to Chicago and merely so billed over this railroad line has been and is certain to be delivered by this defendant to said Union Stock Yards without any instructions from shippers or statement on the waybilling whatsoever; but, on the contrary, it asserts that stock is not delivered at said stock yards unless upon the express request of the shipper, or directions contained in the waybilling thereof, and that all live stock billed for Chicago is handled by this defendant at Chicago and is not taken to Union Stock Yards. And this defendant avers that it has no interest, pecuniary or otherwise, in Union Stock Yards and Transit Company. And this defendant states the truth and fact to be that it does not reach the stock yards of the Union Stock Yards and Transit Company over its own rails, but it has at Western avenue, in the city of Chicago, a connection with
99 the tracks of the Union Stock Yards & Transit Company leading from said connection to the stock yards of said Union Stock Yards & Transit Company, a distance of about four miles; that this connection existed prior to the first day of July, 1894; that up to said first day of July, 1894, this defendant was permitted to use said tracks of said Union Stock Yards & Transit Company for the delivery of live stock to said Union Stock Yards without charge or expense to it by said Union Stock Yards & Transit Company; that on or about the first day of July, 1894, said Union Stock Yards & Transit Company imposed a trackage charge upon this defendant amounting to $1.50 for each car of live stock transported by this defendant between said connection and said stock yards, and that thereupon, this defendant, in order to meet such trackage charge and expense of transfer from said connection to and from said stock yards, did, in connection with other railroads using said stock yards, establish a uniform rate of $2.00 per car upon all cars of live stock so transported between said connection and said stock yards.

And this defendant avers that said charge is just and reasonable, and nondiscriminating, is justified by law, and violates none of the provisions of the act to regulate commerce; that this defendant has at all times handled at its yards at Hawthorne all live stock billed to Chicago and not to said Union Stock Yards; that its tariffs, now on file with your honorable Commission, make it appear that an additional charge of $2.00 is made upon every shipment of live stock routed through Chicago to said stock yards, and that all shipments have the choice of destination at the rates mentioned in said tariffs.

This defendant denies that said charge of $2.00 is an arbitrary increase of published transportation charges, and it denies that it is based upon increased expense to this defendant; but asserts that the same is just and reasonable and nondiscriminating.

4. This defendant asserts that said rate of $2.00 per car is charged and collected upon all freight, including packing-house products, between said stock yards and said connection, and denies that said rate of $2.00 per car is charged upon live stock or packing-house products, or any dead freight whatsoever, consigned to Chicago, and asserts that such charge is made only upon freight consigned to said Union Stock Yards.

And this defendant hereby denies all the other allegations in said complaint contained which are not specifically denied, and asserts that in making said charge of $2.00 per car as aforesaid it has not violated any section of the act to regulate commerce; and that said rate is just, reasonable and nondiscriminating.

100 Wherefore the defendant prays that said complaint may be dismissed.

THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,

By

STATE OF ILLINOIS, *Cook County, ss.*:

being duly sworn, on oath says, that he is the of the Chicago, Burlington & Quincy Railroad Company; that he has read the foregoing answer, and that the facts therein stated are true as he verily believes.

Subscribed and sworn to before me this day of , 1896.

EXHIBIT 2.

Before the Interstate Commerce Commission.

THE CATTLE RAISERS' ASSOCIATION OF TEXAS
vs.
THE FORT WORTH & DENVER CITY RAILROAD Company et als.

The answer of the Chicago, Burlington & Quincy Railroad Company, one of the defendants herein, to the intervening petition of the Chicago Live Stock Exchange, heretofore filed in said cause.

The defendant, the Chicago, Burlington & Quincy Railroad Company, denies any violation of the act to regulate commerce by reason of the matters and things set forth in said intervening petition or otherwise, and for further answer to said petition prays that its answer heretofore filed to the original petition of the Cattle Raisers' Association of Texas may stand as its answer to said intervening petition.

THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,

By

101 STATE OF ILLINOIS, *Cook County, ss:*

C. I. Sturgis, being duly sworn, says that he is the general auditor of the Chicago, Burlington & Quincy Company: that he has

read the foregoing answer, and that the matters and things therein contained are true as he verily believes.

Subscribed and sworn to before me this day of 1897.

Exhibit 3.

Before the Interstate Commerce Commission.

Cattle Raisers' Association of Texas
vs.
Fort Worth & Denver City Railway Company et al.

Now comes the Chicago, Burlington & Quincy Railroad Company and the Burlington & Missouri River Railroad in Nebraska, respondents herein, and make application for a rehearing in the above-entitled cause.

And for cause of said application and in pursuance of the rule of the Commission, these respondents state that the following findings of fact or conclusions of law contained in the report of the Commission herein are erroneous, to wit:

1. The finding of fact or the conclusion of law that "the exaction of a terminal charge of more than $1.00 per car is in violation of the first and possibly of the third section of the act, and that the defendants ought not to exact more than this sum."

2. The conclusion of law and order of the commission "directing the carriers (respondents herein) to cease and desist from charging and collecting the present charge of $2.00."

And for further cause for this application these respondents state that the complainant and intervening petitioner having admitted on the hearing of this cause that the $2.00 terminal charge is a reasonable charge provided any charge could legally be made for the terminal service. The question of the reasonableness of this charge was not seriously considered in the argument heretofore submitted to the Commission. The finding and order of the Commission heretofore to the effect that the carriers (respondents herein) may now lawfully charge more than $1.00 for the terminal service has been made without due and proper hearing.

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Wherefore these respondents pray that the question of reasonableness of the terminal charge be opened to further argument by the allowance of a rehearing herein.

The Chicago, Burlington & Quincy Railroad Company and Burlington & Missouri River Railroad in Nebraska.

Its Solicitor.

State of Illinois, *County of Cook, ss:*

of said county, being duly sworn, on oath says that he is of the Chicago, Burlington & Quincy Railroad Company and Burlington & Missouri River Railroad in Nebraska, respondents in this

proceeding, and that the matters set forth in the foregoing petition are true as he verily believes.

Subscribed and sworn to this day of A. D. 1898.

Notary Public.

(Endorsed:) Filed June 8, 1899. S. W. Burnham, clerk.

103 In the circuit court of the United States for the northern district of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON AND QUINCY RAILroad Company; The Chicago Great Western Railway Company; The Chicago and Northwestern Railway Company; The Chicago, Milwaukee and St. Paul Railway Company; The Chicago and Alton Railroad Company; The Chicago, Rock Island and Pacific Railway Company; The Atchison, Topeka and Santa Fe Railway Company; The Wabash Railroad Company; The Illinois Central Railroad Company.

The Chicago Great Western Railway Company reserving the right to object to all the manifest errors and insufficiencies in the bill of complaint herein, for answer thereto states:

I. It admits that it is a railway corporation created and organized under the laws of the State of Illinois and engaged in the transportation of cattle and other live stock in connection with other roads from various points in the States of Kansas, Nebraska, Texas, Iowa, Indian Territory, and other States, to Chicago in the State of Illinois.

II. It admits and alleges that heretofore, to wit, on the first day of September, 1896, a proceeding was commenced before the said Inter-state Commerce Commission by an association of corporations and individuals claiming to be the owners and producers of cattle, a copy of which said petition is attached to the bill of complaint herein.

Defendant admits that on the 3rd day of September, 1896, a copy of said petition was forwarded to this defendant as required by the act of Congress, and the defendant was required to answer the same in writing, and that thereupon this defendant filed its answer to said petition on the 19th day of September, 1896; that hereto attached marked "Exhibit A," and made a part of this bill of complaint, is a copy of said answer.

III. That afterwards, to wit, on the 10th day of March, 1897, the Live Stock Exchange, an association of live stock commission
104 men, filed its intervening petition, a copy of which is attached to the bill of complaint marked "Exhibit B;" that a copy of said petition was served on this defendant and this defendant filed an answer thereto putting the allegations thereof at issue, which answer was similar to the one hereto attached and filed, to the petition of the Texas Cattle Raisers' Association.

IV. Defendant admits that said matters came on for investigation on testimony before said Commissioners, and that the said defendants

appeared by their respective counsel, cross-examined witnesses produced by said petitioners, and introduced testimony on behalf of said defendants, and admits that the Commission thereupon filed its findings and report, a copy of which said findings and report is attached to the bill of complaint marked "Exhibit C," but defendant denies that the said commission found as a fact that the said terminal charge at Chicago of $2 per carload of live stock was unjust, unreasonable, and unlawful, and alleges that the said Commission found that the said $2 per car was reasonable and not unjust and not discriminatory and not unlawful.

Defendant admits that the Commission formulated an order, a copy of which is attached to the bill of complaint marked "Exhibit D."

Defendants admit that on the 21st day of February, 1898, the Interstate Commerce Commission duly caused properly authenticated copies of its said report, together with the order and notice, to be delivered to this defendant, and admits that this defendant afterwards filed a petition for reargument and that a reargument was had as alleged in said bill of complaint, and that the said Commission made a further report and finding, of which said "Exhibit E" attached to the complaint is a copy.

Defendant admits that the said Commission thereupon made an order, of which "Exhibit F" attached to the bill of complaint is a copy, and that same was served upon this defendant about the 3rd day of September, 1898.

Defendant admits that it has not ceased or desisted from charging said $2 per car for live stock delivered at the stock yards in the city of Chicago, but denies that the said charge was found and held, in and by an opinion of the commission, to be unreasonable, unjust, or unlawful, and denies that the same was unreasonable, unjust, or unlawful.

V. For further answer defendant alleges and states to the court that it it has no knowledge or information sufficient to form a belief as to whether the said complainants, the association known as the Cattle Raisers' Association of Texas, are composed of owners and producers of cattle in the States of Texas, Kansas, Montana, North Dakota, South Dakota, and Indian Territory, or as to whether
105 cattle in carload lots are being constantly shipped by the members of the said cattle raisers' association, or as to whether the said cattle raisers' association has any interest whatever in the rates herein in question. That the Union Stock Yards and Transit Company is a corporation and owns the stock yards, pens, and chutes and the terminal railroad situated in the city of Chicago connecting with most of the defendant lines, but not connecting with the defendant's line of railway, but defendant denies that the same has been used as a common or union depot or station for the city of Chicago for the reception of live stock coming from the defendant's road, and denies that the said defendant has constantly or otherwise held out that its live stock depot or station at Chicago was, or is, a union stock yards in that city, and denies that live stock shipped to Chicago and merely so billed over the line of this defendant has been or is certain to be delivered at said station in Chicago without any instructions from shippers or statement on the railway billing whatsoever.

Defendant denies any knowledge or information as to the purpose of the Union Stock Yards and Transit Company in the establishment of its

stock yards in the city of Chicago, and alleges that the defendant never encouraged or permitted such arrangement for a common or union live stock depot, or had any knowledge thereof whatever or anything to do with the same, but that said stock yards were established long prior to the construction of the defendant's road, and that the defendant has no knowledge of the revenues derived from the fees and other charges for the care and handling of cattle and other live stock at Chicago. This defendant, by a contract and agreement, runs its trains over the Chicago Terminal and Transfer Railway Company's tracks from Forest Home in the State of Illinois to the Union Station of said latter company at Harrison street and Fifth avenue in the city of Chicago where are located the union passenger station and freight depot of this defendant. That this company also has a team track for unloading freight at Twelfth street. That ever since said company has operated its line of railroad into Chicago the Union Stock Yards & Transit Company has owned a line of railway and tracks from its stock pens connecting with the tracks of the Chicago, Pittsburg, Cincinnati, Chicago and St. Louis Railway at or about Thirty-ninth street, and with the tracks of the Chicago Central Railway at about the same place since the construction of said last-named line, and that ever since said company have been doing business over its own rails into Chicago by virtue of this agreement with the Chicago Terminal and Transfer Railway Company, it has run its stock trains and cars over the lines of the said Pittsburg, Cincinnati, Chicago &
106 St. Louis Railway or the said Chicago Central Railway Company's tracks from the connection of said tracks with the said Chicago Terminal and Transfer Railway Company at or near Ogden avenue to the connection of said Stock Yards and Transit Company's tracks at or near Thirty-ninth street. That the Chicago Terminal & Transfer Company is the same company known as the Chicago & Northern Pacific Railroad Company in the answer to the petition of the Cattle Raisers' Association of Texas mentioned and referred to.

From the time of the construction of the railway of the defendant, and the operation thereof over its tracks into the city of Chicago aforesaid, until about the 1st day of July, 1894, this defendant, by leave and license of the said Union Stock Yards & Transit Company, and without charge therefor by said company, ran its engines and cars used in the transportation of live stock consigned to said Union Stock Yards from said track to said stock yards, making no charge to the consignor or consignee of live stock so consigned and carried for such transportation from its line of railroad over the tracks of the said Union Stock Yards & Transit Company, or the said intermediate tracks of other companies.

That from time to time prior to June 1st, 1894, rates for the carriage of live stock had been reduced and the facilities for the carrying of such live stock had been improved by the railroad companies, and that on or about the 1st day of June, 1894, said Union Stock Yards & Transit Company refused longer to permit the defendant and other railroad companies to move their engines and cars over the tracks of the said stock yards company except upon the payment of a toll by this defendant of 40c per car each way, making a total toll or charge of 80c upon each carload of stock transported by the defendant consigned to and delivered at said Union Stock Yards & Transit Company's yards. That this

company is also compelled to pay the Chicago Central Railway Company a trackage or terminal charge of 37½c per car each way for running its cars over the line of the said Chicago Central Railway Company, and 87½c for engines each way when hauling less than five cars, and a like charge when cars are run over the tracks of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway.

That on or about said June 1st, 1894, defendant, believing that it was receiving no compensation for the delivery of said freight from that time, imposed a charge of $2 per car for delivering cars of live stock from its tracks in Chicago to the unloading place on the tracks of said Union Stock Yards & Transit Company, and for the services performed in connection therewith, including the unloading of said stock. That in addition to the said forty cents
107 trackage charge it also pays the Union Stock Yards & Transit Company 25c. for unloading each car, and that the $2 per car does not cover the actual cost to this defendant company for so delivering stock at said terminal place, and that from and after said June 1st it published its tariff and filed with the Interstate Commerce Commission schedules showing the rates for transportation of live stock, and each and every of such tariffs so filed with the Commission and published according to law, plaintiff stated separately thereon the said terminal charge of $2 and stated that the same was in addition to the regular rates for carrying stock to Chicago; that all live stock shipped over the defendant's road after said June 1st, 1894, was by each shipper shipped under and by virtue of said tariff sheets and the contract therein expressed and was by the consignor billed to the Union Stock Yards, and the defendant company, or the connecting carrier with the defendant company, was directed to deliver the same at the Union Stock Yards. And defendant alleges that said charge of $2 per car was not an arbitrary increase of the published transportation charges on live stock to Chicago for the mutual benefit of the Union Stock Yards & Transit Company and this defendant, but alleges that the same was made to cover a part of the expense to this defendant of switching said cars, and was a division of the rate as authorized by the interstate-commerce act. Defendant denies that the established aggregate rate and charges to this defendant for the transportation over its line of cattle and other live stock from shipping points in Texas and in other Western and Southwestern States to Chicago, or from Montana and said Northwestern States to Chicago, including said terminal and switching charge of $2, are to the extent of said $2, or any extent, unjust and unreasonable to themselves or relatively as compared to the transportation charges on live stock over its line or connecting lines from various points of shipment to destinations other than Chicago, and denies that the said $2 terminal charge is unreasonable or excessive and alleges that the same does not cover the actual cost to the defendant of the terminal services performed by the defendant company, and the expense to the defendant company therein, and alleges that the defendant is entitled to charge the reasonable cost of such service and a fair and reasonable income in addition thereto.

And defendant denies that said rates to the extent mentioned, or to any other extent, unjustly discriminate against the said members of the said Cattle Raisers' Association or members of the Chicago Live Stock

Exchange or anyone else, or any owners or shippers of live stock of the consignees thereof, and denies that it subjects them or any of them
108 or their traffic to any undue and unreasonable prejudice and disadvantage in favor of, and to the undue and unreasonable advantage of shippers of live stock and other traffic to live-stock markets or destinations other than Chicago, or in favor of consignees at such other markets or destinations, and alleges that the shipments to other stock markets are not under the same circumstances and conditions and that by reason of competition the defendant is unable to make like charges for terminal services at other stock markets, and denies that defendant is subject to equal expense for delivery of stock at other stock markets. Defendant denies that by exacting said terminal charge of $2 per car, it violates sections 1, 2, and 3 of the act to regulate commerce, and denies that the said terminal charge for switching live stock is in excess of the charges for shipping packing-house products or other dead freight to the same locality.

VI. Further answering, this defendant alleges that heretofore, to wit, some time during the year 1895, the Atchison, Topeka & Santa Fe Railway and the predecessors of one of these defendants was in the hands of the receiver of the United States circuit court for the northern division of the northern district of the State of Illinois and that on or about the said year 1895 the members of the said Chicago Live Stock Exchange petitioned the United States circuit court alleging all the facts set forth in their petition attached to the bill of complaint in this case, and alleged that the said $2 charge was excessive, unreasonable, and discriminatory and alleged all the facts and circumstances as they were alleged in the petition of the said Live Stock Exchange as attached to the bill of complaint in this cause.

That the said Atchison, Topeka & Santa Fe Railway Company answered said petitioner. That the said court then and there had and acquired jurisdiction of the parties thereto and of the subject-matter thereof. That a trial was had on the facts proven in said cause, which were the same facts set forth in this case, and such proceedings were had therein that the United States circuit court of appeals for the said eighth circuit duly held and rendered judgment in said cause that the said Atchison, Topeka & Santa Fe Railway had a right under its tariff sheets and under the circumstances in that case to impose the said $2 terminal charge, and judgment was duly entered and given therein in favor of the said Atchison, Topeka & Santa Fe Railway. That this defendant hereby refers for greater certainty to all the records and proceedings in said cause and asks leave to make the same a part hereof. That the tariff sheets published by the Atchison, Topeka & Santa Fe Railroad Company involved in said case is the same tariff published by this defendant
109 under which it has imposed said charge, and that the said decision of the United States circuit court of appeals is an adjudication that this defendant has a right to impose the said $2 charge in addition to the charges for hauling said live stock to the city of Chicago.

Wherefore defendant prays that it be hence discharged with its costs

and disbursements by it sustained and that it have such other relief as is consistent with equity.

CHICAGO GREAT WESTERN RAILWAY CO.,
By FRANK B. KELLOGG,
General Counsel.

FRANK B. KELLOGG,
Solicitor & Counsel.

Before the Interstate Commerce Commission.

THE CATTLE RAISERS' ASSOCIATION OF TEXAS, Complainant,
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY, Defendant.

Now comes the Chicago Great Western Railway Company and for its answer to the petition in the above-entitled matter states and alleges as follows:

I. It has no knowledge or information sufficient to form a belief in reference to any of the matters alleged in subdivision one of said complaint, and hence denies the same.

II. It is a common carrier engaged in the transportation of property by railroad, either over its own line or by traffic arrangement with other lines, from points in the States of Texas, Kansas, Nebraska, Colorado, Wyoming, Indian Territory, Montana, North Dakota, and South Dakota to Chicago, in the State of Illinois. It is informed and believes that the Union Stock Yards & Transit Co. is not a common carrier so engaged in the transportation of property to Chicago, but is the owner of a railroad located in the city of Chicago, but this defendant denies that the said railroad of said Union Stock Yards & Transit Co. is operated and used under any contract or agreement by this defendant in such transportation of property to Chicago, except as hereinafter set forth.

III. It admits that the said Union Stock Yards & Transit Co. now owns, and for many years has owned, yards, pens and chutes, and railway approaches thereto, in the city of Chicago, but denies that the
110 name have been or are used by this defendant as a common or union depot or station for that city for the reception and delivery of live stock and the shipment and forwarding of that class of railway traffic. It denies that it has been constantly or otherwise held out by this defendant that its live-stock depot or station at Chicago was and is the Union Stock Yards in that city, and denies that live stock shipped to Chicago and merely so billed over the line of this defendant has been and is certain to be delivered at such depot or station in Chicago without any instructions from shippers or statement on the railway billing whatsoever. It has no knowledge or information as to the purposes of said Union Stock Yards & Transit Co. in the establishment of its stock yards in the said city of Chicago, but denies that this defendant encouraged and promoted any such arrangement for a common or union live stock depot as is set forth in the third paragraph of said complaint, or had any knowledge thereof whatever, or anything to do with the same; and that said stock yards were in existence and established long

before the line of this defendant was constructed. It has no knowledge or information as to the revenues derived by said Union Stock Yards & Transit Co. from any source whatever, except the charges paid by this defendant to the said stock yards company. That this defendant company, by a contract and agreement, runs its trains over the C. & N. P. R. R. Co.'s tracks from Forest Home, in the State of Illinois, to the Union Station of said Chicago and Northern Pacific Railroad Company at Harrison street and Fifth avenue in the said city of Chicago, where are located the union passenger station and the freight depot of this defendant; that this company also has a team track for unloading freight at Twelfth street. It alleges that ever since this company has operated its line of railroad into Chicago, the Union Stock Yards & Transit Company have owned a line of railway or tracks from its stock pens connecting with the tracks of the Pittsbu'gh, Cincinnati, Chicago & St. Louis Railway at or about Thirty-ninth street, and with the tracks of the Chicago Central Railway at about the same place since the construction of said line; and that ever since this company has been doing business over its own rails into Chicago by virtue of its agreement with the Chicago and Northern Pacific Railroad Company, it has run its stock trains and cars over the line of the said Pittsburgh, Cincinnati, Chicago & St. Louis Railway, or the said Chicago Central Railway Company tracks, from the connection of said tracks with the said Chicago and Northern Pacific Railway at or near Ogden avenue to the connection of said Stock Yards & Transit Company's tracks at or near 39th street. From the time of the construction of the railway of the defendant and the operation thereof over its
111 tracks into the city of Chicago as aforesaid, and until about the first day of July, 1894, this defendant, by leave and license of the said Union Stock Yards & Transit Co., and without charge therefor by said company, ran its engines and cars used in the transportation of live stock consigned to said Union Stock Yards from said track to said stock yards, making no charge to the consignor or consignee of live stock so consigned and carried for such transportation from its line of road over the track of said Union Stock Yards & Transit Co. to said stock yard. That on or about the first day of June, 1894, said Union Stock Yards & Transit Co. revoked said license and refused longer to permit this defendant to move its engines and cars over the tracks of said stock yards company, except upon the payment of a toll of 40 cents per car each way, making a total toll or charge of 80 cents upon each carload of freight transported by this defendant, consigned to and delivered at said Union Stock Yards & Transit Company's stock yards. That this company is also compelled to pay the Chicago Central Railway Company a trackage charge of 37½ cents per car each way for running its cars over the line of the said Chicago Central Railway Company, and 65 cents for the engine when deliveries are made of four cars or under. And this defendant further alleges that the said $2 switching charge does not cover the expense to this defendant for switching said cars so consigned to the said stock yards, and that the charge is lawful and reasonable; and this defendant denies that it entered into any agreement whatsoever with the Union Stock Yards & Transit Co. with reference to said charge of 40 cents per car in the manner set forth in paragraph three of said complaint. This defendant admits that on or about the 9th day of July,

1894, it, in the form prescribed by law, established and published the said switching or terminal charge of $2 per car on all carload shipments of freight, including carloads of live stock received from or delivered to said Union Stock Yards, and has ever since charged and collected said terminal or switching charge. Defendant denies that such charge of $2 per car was an arbitrary increase of published transportation charges on live stock to Chicago for the mutual benefit of the Union Stock Yards & Transit Company and this defendant, but alleges that the same was made to cover a part of the expense to this defendant of switching said cars. It denies that this defendant does make the said Union Stock Yards its main live-stock depot, and in any way promotes the consignment of stock to said yards, but that all said stock is so consigned by the various shippers before it reaches the line of this defendant; that the line of this defendant extends from Kansas City to Chicago, and from Min-
112 neapolis and St. Paul to Chicago. It denies that the established aggregate rates and charges of this defendant for the transportation over its line of cattle and other live stock from shipping points in Texas and other Western and Southwestern States to Chicago, or from Montana and said Northwestern States to Chicago, including said terminal or switching charges of $2 per car, are to the extent of said $2, or to any extent, unjust and unreasonable in themselves or relatively as compared to the transportation charges on live stock over its line or connecting lines from various points of shipment to destinations other than Chicago. It denies that said rates to the extent mentioned, or to any other extent, unjustly discriminate against complainant, its members, and other owners and shippers of live stock and consignees thereof at Chicago, and denies that it subjects them and their traffic to undue and unreasonable prejudice and disadvantage in favor of, and to the undue and unreasonable preference and advantage of, shippers of live stock and their traffic to live-stock markets or destinations other than Chicago, and in favor of consignees at such other markets or destinations. It denies that said rates of this defendant are unjustly discriminating in favor of, and to the undue and unreasonable preference and advantage of, itself, or that such rates and acts of this defendant in connection therewith are in violation of sections one, two, three, and six (or either of them) of said act to regulate commerce.

V. It denies that by exacting said additional charge of $2 per car on live stock consigned to Chicago it violates sections 1, 2, and 3 of said act (or either of them), and denies that said terminal charge for switching live stock is in excess of the charges for switching packing-house products or other dead freight to the same locality. Further answering, this defendant says that the circuit court of appeals of the United States for the 7th circuit held said charge a legal and valid charge in a case against the Atchison, Topeka & Santa Fe Railroad Company, and that the State court for the State of Illinois held such a charge a valid charge in a case brought against the Chicago & Alton Railroad Company, and this defendant asks leave to refer to the records, files, and decisions in said cases for greater certainty.

VI. This defendant denies each and every other allegation of the said complainant not herein specifically admitted or denied.

Wherefore this defendant prays that the said complaint may be dismissed.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY,
By FRANK B. KELLOGG,
General Counsel.

113 STATE OF ILLINOIS, *County of Cook, ss:*

P. C. Stohr being duly sworn, on his oath says, that he is the general freight agent of the Chicago Great Western Railway Company; that he has read the foregoing answer, and the facts therein stated are true as he verily believes.

P. C. STOHR.

Subscribed and sworn to before me this 19th day of September, A. D. 1899.

WM. B. FERSHY,
Notary Public.

STATE OF MINNESOTA, *County of Ramsey, ss:*

P. C. Stohr came before me personally, and being duly sworn, doth say that he is the general traffic manager of the Chicago Great Western Railway, defendant in the above-entitled action; that the foregoing pleading is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters that he believes it to be true.

P. C. STOHR.

Subscribed and sworn to before me on this 5th day of June, A. D. 1899.

[NOTARIAL SEAL.] C. W. G. WITBEE,
Notary Public, Ramsey County, Minn.

(Endorsed:) Filed June 8, 1899. S. W. Burnham, clerk.

114 UNITED STATES OF AMERICA,
Northern District of Illinois.

In the circuit court of the United States in and for the northern district of Illinois.

THE INTERSTATE COMMERCE COMMISSION, PETITIONER,
vs.
THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY et al., defendants. } No. 25101.

The separate answer of the Chicago North-Western Railway Company, one of the defenda'ts in the above-entitled proceeding to the petition of the Interstate Commerce Commission therein.

This defendant, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception or other objection that can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petition contained, for answer thereunto

or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

1. It admits the allegations of the paragraphs of the petition numbered 1, 2, and 3.

2. This defendant admits that it filed with the Interstate Commerce Commission an answer by it to said petition of the Cattle Raisers' Association of Texas, a copy of which answer, marked "Exhibit 1," is hereto attached and made a part hereof; and that it also filed with the said Commission an answer by it to said intervening petition of the Chicago Live Stock Exchange, a copy of which answer, marked "Exhibit 2," is hereto attached and made a part hereof.

This defendant further admits that the said proceedings before the Interstate Commerce Commission came on for investigation and hearing, as in said petition averred, and that afterwards the said Commission made a report in writing in respect thereof which included certain findings of fact; but this defendant denies that the effect of said report and findings of fact as set forth in paragraph 4 of the petition herein, and this defendant on the contrary avers that said report and findings
115 of fact were only such as appear from the original thereof now on file in the office of said Interstate Commerce Commission; but this defendant admits that said report and findings of fact are correctly set forth in the copy thereof marked "Exhibit C," attached to the petition herein.

This defendant further admits that the said Commission formulated an order and notice which are correctly set forth in the copy thereof, marked "Exhibit D," attached to the petition herein; but this defendant avers that said order and notice have only such force and effect as are given to the same by law, and this defendant denies that said order was or is a lawful order or requirement. This defendant admits that copies of said report and findings of fact and of the said order and notice of the said Commission were duly delivered to this defendant.

This defendant further admits that it petitioned the said Commission for a reargument of said matter, but avers that the scope and purpose of its said petition for a reargument were only such as appear on the face thereof, and are shown by the copy of said petition for reargument, marked "Exhibit 3," and attached hereto as a part hereof. This defendant admits that arguments were had on said petition for reargument and that thereupon said Commission modified its report and findings of fact, which said modifications this defendant admits are correctly set forth in "Exhibit E" to the petition herein. This defendant further admits the Commission thereupon formulated a further order and notice a copy of which is correctly set forth in "Exhibit F" attached to the petition herein, and that copies thereof were delivered to this defendant; but this defendant denies that said order or notice was or is a lawful order or requirement. This defendant admits that it has refused to obey said orders of said Commission and each of them.

3. This defendant denies that said charge of two dollars per car made by it upon carloads of live stock delivered at the Union Stock Yards in Chicago has been or is unreasonable, unjust, or unlawful; or that said charge has been or is excessive in amount; or that said charge or the aggregate charges of defendant for transportation of live stock from

any place to the Union Stock Yards at Chicago have been or are to any extent unjust or unreasonable in themselves or relatively to transportation charges on live stock to destinations other than Chicago; or that said two-dollar charge or the aggregate charges of defendant for the transportation of live stock from any place to the Union Stock Yards at Chicago have been or are an unjust discrimination against Chicago in comparison with any other destination of live-stock shipments or against shippers of live stock to Chicago in comparison with shippers of live stock to
116 any other destination or against receivers of live stock at Chicago in comparison with receivers of live stock at any other destination, or against the live-stock traffic in comparison with any other description of traffic; and this defendant denies that while imposing said two-dollar charge at all it has omitted to charge it to anyone whomsoever for a like and contemporaneous service, and this defendant alleges that said charge has been made uniformly and alike upon all shipments of live stock to the Union Stock Yards at Chicago ever since the charge was first imposed in 1894; and this defendant denies that in imposing said two-dollar charge it has at any time subjected any person, company, firm, corporation, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, or has at any time made or given to any person, company, firm, corporation, locality, or description of traffic any undue or unreasonable preference or advantage; and this defendant denies that by making said two-dollar charge on live stock delivered at the Union Stock Yards at Chicago it has violated or does violate section 1, or section 2, or section 3, or any other section of the interstate-commerce act.

4. This defendant alleges that it neither has owned or controlled, nor does own or control, any line of railroad leading to or terminating at the Union Stock Yards of the Union Stock Yards & Transit Company in the city of Chicago, but that a line of railway track owned by the Union Stock Yards & Transit Company extends from a point of connection with the line of this defendant near the junction of Campbell and Ogden avenue in the city of Chicago to said Union Stock Yards, and that the only means of access to said stock yards for live stock coming into the city of Chicago over the railroad of this defendant has been and is by means of the said tracks of the Union Stock Yards & Transit Company from their point of connection with this defendant's road to said stock yards; that on June 1st, 1894, said Union Stock Yards & Transit Company required that for any future use of its said tracks in reaching said stock yards this defendant company should pay a rental of seventy-five cents per car each way for each car of live stock delivered at the stock yards, this charge of one dollar and a half per car being in addition to the charge at all times imposed of twenty-five cents per car for unloading live stock at said stock yards; that in addition to paying the total of one dollar and seventy-five cents per car for the aforesaid charges of the Union Stock Yards & Transit Company it costs and has, since June 1st, 1894, cost this defendant the further expense of the actual transportation work for each car of live stock delivered at the Union Stock Yards in hauling the same from the aforesaid junction of the tracks of this defendant with the tracks of the Union Stock Yards & Transit Com-
117 pany to said stock yards, and that the total cost to this defendant of such service in hauling live-stock cars to said stock yards and

delivering them thereat is and at all times since June 1st, 1894, has been in excess of two dollars per car; that the rates for transportation of live stock to Chicago had for many years before June 1st, 1894, been steadily declining and had at that date become very low, and that since June 1st, 1894, for numerous reasons, including strenuous and diversified competition, a farther decline has taken place in defendant's rates for the transportation of live stock to Chicago from a great portion of the places of shipment from which live stock is hauled over this defendant's line to Chicago, such decline since June 1st, 1894, in the rates for transportation of live stock to Chicago (wholly apart from said two-dollar charge) amounting to more than two dollars per carload; that the places from which the rates to Chicago elsewhere than at said stock yards, and not including said two-dollar charge, for delivery at the stock yards, have so declined embrace a great part of the territory concerning shipments from which complaint is made in this proceeding; that on June 1st, 1894, when said rental charges were first imposed, as aforesaid, by the Union Stock Yards & Transit Company, this defendant believed, and the fact was, that its live-stock rates to Chicago were already so low as not to be a reasonable and sufficient compensation to defendant for the service performed in transporting live stock to said Union Stock Yards, and that defendant's said live-stock rates were at least two dollars lower than would be reasonable for such transportation to the said Union Stock Yards; that it thereupon made, printed, filed with the Interstate Commerce Commission, and duly published and posted in two public and conspicuous places in every depot, station, or office of this defendant where freight was received for transportation, in such form that it should be accessible to the public and could be conveniently inspected, and has ever since kept on file and duly published and posted a tariff concerning its charges for transportation of live stock to the Union Stock Yards in Chicago or elsewhere in Chicago, wherein and whereby it was and is announced to the public that defendant's charges thereafter for transportation of live stock to the Union Stock Yards at Chicago would be two dollars per carload more than the ordinary live-stock rates to Chicago, and that for such ordinary live-stock rate to Chicago defendant would not transport live stock so said Union Stock Yards and deliver it thereat; that since June 1st, 1894, the ordinary or flat Chicago live-stock rate has not been made for live stock to be transported to and delivered at said stock yards, and it has been distinctly declared by the tariffs
118 of this defendant that said ordinary or flat live-stock rate to Chicago was not imposed for and did not include any service in transporting live stock over the tracks of the Union Stock Yards & Transit Company to said stock yards or delivering stock at such yards; that said charge of two dollars per car made by defendant since June 1st, 1894, on live stock transported to the Union Stock Yards has been made and is made only for the service of transporting from the aforesaid junction of this defendant's road with the tracks of the Union Stock Yards & Transit Company over said latter tracks to said Union Stock Yards and for delivery at said yards, and that no other charge than said two-dollar charge has at any time been made or is made by this defendant for any portion of said service in transporting live stock from the aforesaid junction of this defendant's road with the tracks of the Union Stock

Yards & Transit Company to said stock yards and delivery at said yards.

5. This defendant denies that it has or at any time in the last ten years has had any ownership of or interest in the Union Stock Yards & Transit Company or its railroad or other property.

6. This defendant alleges that much the greater part of the shipments of live stock over its road to Chicago, either at said Union Stock Yards or elsewhere in that city, has, since June 1st, 1894, consisted and still does consist of shipment from places not upon the road of this defendant, but upon other connecting lines of railroad, and has been carried and still is carried to Chicago upon a joint rate made by this defendant with a connecting carrier or carriers, over whose road or roads the shipment travels, and that such joint rate for such shipments has been and is shared by this defendant with such other connecting carrier or carriers upon agreed percentages, but said two-dollar terminal charge imposed for the transportation of live stock from the aforesaid junction of this defendant's road with the tracks of the Union Stock Yards & Transit Company in Chicago to said Union Stock Yards has been made and is made solely by this defendant, and not jointly with any connecting carrier, and has been at all times and is received solely and wholly by this defendant, being compensation to this defendant for the service aforesaid of transporting over the tracks of the Union Stock Yards & Transit Company to said stock yards and delivery at said stock yards of such live stock, which at all times has been performed and is still performed solely and entirely by this defendant; and this defendant alleges that any reduction of said two-dollar charge must and will fall wholly upon this defendant, while any reduction of the general or flat live-stock rate to Chicago must and would, in the cases of all shipments made over the connecting roads of this defendant and a connecting carrier or carriers, fall upon all such connecting carriers and be shared by them in the proportion of their percentages in the joint rate to Chicago.

119 7. This defendant alleges that heretofore, to wit, some time in the year 1895, the property of the Atchison, Topeka & Santa Fe Railroad Company, being the predecessor of the Atchison, Topeka & Santa Fe Railway Company, one of the defendants herein, was in the hands of receivers of the United States circuit court for the northern district of Illinois, and that in or about said year 1895, the members of said Chicago Live Stock Exchange, which filed intervening petition, as aforesaid, in this proceeding before the Interstate Commerce Commission, did petition said United States circuit court for an order directing its receivers, who were in possession and in charge of the operation of the railway of said Atcheson, Topeka & Santa Fe Railroad Company, to discontinue the making of said two-dollar terminal charge upon live stock delivered to said Union Stock Yards, and did in their said petition to said circuit court allege all the facts set forth in the petition of the Chicago Live Stock Exchange attached to the petition herein as "Exhibit B;" that the said Atchison, Topeka & Santa Fe Railroad Company and the receivers thereof answered said petition, and said United States circuit court then and there acquired and had jurisdiction of the parties to said petition and of the subject-matter thereof; that a trial was had upon said petition and answer and the facts proven, which were the same facts that are set forth herein, and such proceedings were had by

and before said United States circuit court for the northern district of Illinois and by and before the United States circuit court of appeals for the seventh circuit; that said United States circuit court of appeals duly adjudged and decreed that the said Atchison, Topeka & Santa Fe Railroad Company and its receivers had a right under the tariffs of said company, which were identical with the tariffs made by this defendant as aforesaid concerning the imposition of said terminal charge, after June 1st, 1894, and under the facts appearing to said United States circuit court of appeals, which were the same as the facts herein presented, to impose said two-dollar terminal charge, and judgment duly entered and given in said matter in favor of said Atchison, Topeka & Santa Fe Railroad Company and its receivers; that this defendant hereby refers for greater certainty to all the records and proceedings in the matter of said petition of the members of the Chicago Live Stock Exchange to said United States circuit court for the northern district of Illinois, both in said United States circuit court for the northern district of Illinois and in said United States circuit court of appeals for the seventh circuit, and asks leave to make such records and proceedings a part hereof and to have them so considered; and that said judgment of the United
120 States circuit court of appeals in said matter is an adjudication that this defendant has a right to impose the said two-dollar terminal charge in addition to its ordinary charge for hauling live stock to the city of Chicago for delivery elsewhere than at said Union Stock Yards.

8. This defendant repeats here, as if now specially stated, each and all of its allegations and denials contained in its answer to the original petition or complaint before the Interstate Commerce Commission in this proceeding, of which answer a copy, marked "Exhibit 1," is attached, as already hereinbefore stated, and is made a part hereof.

9. This defendant prays the same benefits as if it had demurred to the said petition herein; and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

CHICAGO & NORTH-WESTERN RAILWAY COMPANY,
[SEAL.] By I. M. WHITMAN, *Its General Manager.*

Attest:

J. B. REDFIELD,
Assistant Secretary of Chicago & North-Western Railway Company.

LLOYD W. BOWERS,
General Counsel of said Defendant,
Chicago & North-Western Railway Company, and its Solicitor.

EXHIBIT 1.

Before the Interstate Commerce Commission.

THE CATTLE RAISERS' ASSOCIATION OF TEXAS, complainant,
vs.
THE FORT WORTH & DENVER CITY RAILWAY COMPANY et al., including the Chicago and North-Western Railway Company, defendants.

Now comes the Chicago & North-Western Railway Company, one of the defendants herein, and for answer to said complaint says:

1. It has no knowledge or information as to the averments of paragraph 1 of said complaint and therefore denies the same.

121 2. It is a common carrier engaged in the transportation of property by railroad either over its own line or in connection with other carriers from points in the States of North Dakota, South Dakota, Nebraska, Wyoming, and elsewhere, to Chicago, in the State of Illinois. It is informed and believes that the Union Stock Yards & Transit Company is not a common carrier so engaged in the transportation of property to Chicago, but is the owner of a railroad located in the city of Chicago. It denies that the said railroad of said Union Stock Yards & Transit Company is operated and used under any contract or agreement by this defendant in such transportation of property to Chicago, except as hereinafter set forth.

3. It admits that the said Union Stock Yards & Transit Company now owns and for many years has owned yards, pens, and chutes and railway approaches thereto in the city of Chicago. It denies that the same have been or are used by this defendant as a common or union depot or station of this defendant for the reception or delivery of live stock or the accommodation of that description of railway traffic. It denies that it has been constantly or otherwise held out by this defendant that its live-stock depot or station at Chicago was or is the Union Stock Yards in that city. It denies that live stock shipped to Chicago and merely so billed over the line of this defendant has been or is certain to be delivered at said Union Stock Yards without any instructions from shippers or statement on the railway billing whatsoever. It has no knowledge or information as to the purposes of the said Union Stock Yards & Transit Company in the establishment of its stock yards in the said city of Chicago, as alleged in said third paragraph of said complaint. It denies that this defendant encouraged or promoted any arrangement for a common or union live-stock depot, as set forth in the third paragraph of said complaint. It admits that prior to the first day of June, 1894, it was allowed by the Union Stock Yards & Transit Company to use its said tracks in said city in bringing stock to and taking it from the said stock yards without charge to this defendant. It alleges that the line of railway of the Galena Division of this defendant extends in an easterly direction through the city of Chicago to its terminal station at Wells street in said city of Chicago, where is located its Chicago passenger depot; that the main freight depot of the Galena Division of this defendant is located at State and North Water street in said city of Chicago; that the line of railway of the Wisconsin Division of this railway extends in a southeasterly direction through the city of Chicago to its terminal station at Wells street in said city, where is located its Chicago passenger depot;

122 that the main freight depot of the Wisconsin Division of this defendant is at or near Grand avenue in said city; that there are four other freight depots belonging to this defendant established upon the line of its tracks at various points in said city of Chicago; that one of said depots and yards is known as the Wood street station and is located near the corner of Western avenue and 16th street in the said city of Chicago. It alleges that at the time the said Union Stock Yards & Transit Company established its stock yards the said Union Stock Yards & Transit Company built a line of railway from its said stock

yards to a point in connection with the tracks of this defendant at or near the Wood street station of this defendant near the intersection of said 16th street and Western avenue in said city of Chicago, and that said point of connection is about five (5) miles northerly from the said Union Stock Yards, and about five (5) miles east and south of the Grand avenue and State street freight depots of said defendant, so that the last-named depots are about ten miles from said Union Stock Yards. This defendant further alleges that from the time of the construction of said railway track of said Union Stock Yards & Transit Company and the connection thereof with the tracks of this defendant, as aforesaid, until about the first day of June, A. D. 1894, this defendant, by leave and license of said Union Stock Yards & Transit Company and without charge therefor by said company, ran its engines and cars used in the transportation of live stock consigned to said Union Stock Yards over said tracks of the Union Stock Yards & Transit Company to said stock yards, and that this defendant made no charge to the consignor or consignee of live stock so consigned and carried for such transportation from its line of road over the track of said Union Stock Yards & Transit Company; that on or about the first day of June, A. D. 1894, said Union Stock Yards & Transit Company revoked said license and refused longer to permit this defendant to move its said engines and cars over the tracks of said Union Stock Yards & Transit Company, except upon the payment of a toll or charge of seventy-five cents (75c.) per car each way, making a total toll or charge of one dollar and a half ($1.50) on each carload of freight transported by this defendant and consigned and delivered at said Union Stock Yards & Transit Company's yards; that thereupon, on or about the ninth day of July, A. D. 1896, this defendant, as prescribed by law, established and published a switching or terminal charge of two dollars per car on all carload shipments of freight, including carloads of live stock, received from or delivered to said Union Stock Yards, and has since charged, collected, and received the said terminal or switching charge of two dollars ($2) per car on each carload of
123 freight, including live stock, transported by this defendant from its line of road at the connection aforesaid over the track of the said Union Stock Yards & Transit Company to the said Union Stock Yards; and this defendant avers that said charge is lawful and reasonable. This defendant denies that it has entered into any agreement whatever with said Union Stock Yards & Transit Company with reference to said charge of seventy-five cents (75c.) a car in the manner set forth in paragraph 3 of said complaint.

4. This defendant denies that the established aggregate rates and charges of this defendant for the transportation over its line of cattle or other live stock from shipping points in Western and Southwestern States to Chicago, including said additional so-called terminal or switching charge of two dollars per car, are to the extent of said two dollars per car, or to any extent, unjust or unreasonable in themselves, or relatively as compared with transportation charges on live stock over its line or connecting lines from the various points of shipment to destinations other than Chicago. It denies that said rates to the extent mentioned unjustly discriminate against complainant, its members, or other owners or shippers of live stock or consignees thereof at Chicago. It denies that said

rates subject them or their traffic to undue or unreasonable prejudice or disadvantage, in favor of or the undue or unreasonable preference or advantage of shippers of live stock or other traffic to destination other than Chicago, or in favor of consignees at such other markets or destinations. It denies that said rates of said defendant unjustly discriminate in favor of or to the undue or unreasonable preference or advantage of itself. It denies that the said additional advance charge of two dollars per car was established or is maintained or collected by it without increased service or without any increase in cost to it in operating its line to Chicago or delivering stock at said Union Stock Yards at Chicago.

5. It denies that by exacting said charge of two dollars per car, as set forth aforesaid, it violated sections one, two, or three of said act to regulate commerce.

It denies all the allegations of said complaint not herein specifically admitted. Wherefore, this defendant prays that said complaint may be dismissed

CHICAGO & NORTH-WESTERN RAILWAY COMPANY.
By J. M. WHITMAN, *General Manager of said Company.*

124 EXHIBIT 2.

Before the Interstate Commerce Commission.

THE CATTLE RAISERS' ASSOCIATION OF TEXAS, complainant,
vs.
THE FORT WORTH & DENVER CITY RAILWAY Company et al., defendants, The Chicago Live Stock Exchange, intervenor.

Now comes the Chicago & North-Western Railway Company, one of the defendants herein, and for answer to the intervening petition of the said The Chicago Live Stock Exchange, says:

1. It makes its answer to the said complaint heretofore filed in said cause its answer in part to said intervening petition.

2. Protesting that it is not called upon in this answer to respond to the arguments which compose the said intervening petition, it denies that the assessment and collection of said two dollar ($2.00) terminal or switching charge constitutes an unjust discrimination or an undue or unreasonable preference under section two (2) and three (3) of the act to regulate commerce, or either of said sections.

It denies all allegations of said intervening petition not herein specifically admitted or denied.

Wherefore this defendant prays that said intervening petition may be dismissed.

CHICAGO & NORTH-WESTERN RAILWAY COMPANY,
By LLOYD W. BOWERS, *General Counsel.*

STATE OF ILLINOIS, *County of Cook, ss.*

J. M. Whitman, of said county, being first duly sworn, on oath says that he is the general manager of the Chicago & North-Western Railway Company; that he has read the foregoing answer, and that the things therein stated are true, as he verily believes.

J. M. WHITMAN.

Subscribed and sworn to before me this day of April, A. D. 1897.

Notary Public, Cook County, Illinois.

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EXHIBIT 3.

Before the Interstate Commerce Commission.

CATTLE RAISERS' ASSOCIATION OF TEXAS,
vs.
FORT WORTH & DENVER CITY RAILWAY COMPANY ET AL.

Now comes the Chicago and North-Western Railway Company, one of the respondents herein, and makes application for a rehearing of the above entitled cause.

And for cause of said application and in pursuance of the rule of the Commission this respondent states that the following findings of fact or conclusions of law contained in the report of Commission herein are erroneous, to wit:

1. The finding of fact or the conclusion of law that "the exaction of a terminal charge of more than $1.00 per car is in violation of the first and possibly of the third section of the act, and that the defendants ought not to exact more than this sum."

2. The conclusion of law and order of the Commission directing "the carriers (respondents herein) to cease and desist from charging and collecting the present charge of $2.00."

And for the further cause for this application this respondent states that the complainant and intervening petitioner having admitted on hearing of this cause that the $2.00 terminal charge is a reasonable charge, provided any charge could legally be made for the terminal service, the question of the reasonableness of this charge was not seriously considered in the arguments heretofore submitted to the Commission. The finding and order of the Commission, therefore, to the effect that the carriers (respondents herein) may not lawfully charge more than $1.00 for the terminal service has been made without due and proper hearing.

Wherefore this respondent prays that the question of the reasonableness of the $2.00 terminal charge be opened to further argument by the allowance of a rehearing herein.

CHICAGO & NORTH-WESTERN RAILWAY COMPANY,
By LLOYD W. BOWERS,

General Counsel.

(Endorsed:) Filed June 8, 1899. S. W. Burnham, clerk.

126 In the circuit court of the United States for the northern district of Illinois, northern division.

THE INTERSTATE COMMERCE COMMISSION, Complainant.
vs.
THE CHICAGO, BURLINGTON AND QUINCY RAILroad Company; The Chicago Great Western Railway Company; The Chicago and North-Western Railway Company; The Chicago, Milwaukee and St. Paul Railway Company; The Chicago and Alton Railroad Company; The Chicago, Rock Island and Pacific Railway Company; The Atchison, Topeka and Santa Fe Railway Company; The Wabash Railroad Company; The Illinois Central Railroad Company, defendants. } Gen. No. 25101.

The separate answer of the Chicago, Milwaukee and St. Paul Railway Company, one of the above defendants, to the bill of complaint of the Interstate Commerce Commission, the above complainant.

This defendant, now and at all times hereafter, saving and reserving to itself all right and benefit of exception to the said bill of complaint, for answer thereto, or to so much and such parts thereof as it is advised is material or necessary to answer, says:

1. The defendant admits that said complainant, The Interstate Commerce Commission, was created and now exists under and by virtue of an act of Congress entitled "An act to regulate commerce" (approved February 4th, 1897), as amended, etc.; admits that defendant was, and is, a corporation organized and existing under the laws of the State of Wisconsin, and a common carrier engaged in the transportation of persons and property over its lines of railway extending through and across several of the Western States, by continuous carriage, and particularly that it was, and is, engaged in the transportation of cattle and other live stock from various points in such States to Chicago, in the State of
127 Illinois; and that as such common carrier, during the times mentioned, it was and still is subject to the provisions of said act and amendments.

2. This defendant admits that on, to wit, September 1, 1896, it was duly impleaded in the controversy before said Interstate Commerce Commission, upon petition of the Cattle Raisers' Association of Texas on behalf of its members and others interested in live stock shipment in Chicago, Illinois, if which it was charged that the defendant (among others) in respect to such transportation was violating certain provisions of said "act to regulate commerce," and particularly in that it imposes an unjust and unreasonable terminal or switching charge of $2.00 per carload upon live stock at said Chicago, Illinois, and thereby unjustly discriminated against said city, etc.; and it further admits that "Exhibit Q" of complainant's bill is a correct copy of said petition.

3. This defendant admits that afterwards, to wit, on March 10th, 1897, the Chicago Live Stock Exchange filed its intervening petition therein,

charging in substance the same acts and alleged violations of law by the defendant railway companies, and admits that "Exhibit B" of complainant's bill is a correct copy of said intervening petition.

4. This defendant further admits and states that copies of said original and intervening petitions were duly served upon it by said Commission, and that it thereupon filed its separate answers in writing thereto, admitting in substance that it had imposed and collected a switching charge of $2.00 per carload upon live stock consigned to and delivered at the Union Stock Yards, Chicago, which was beyond the terminus of its railroad in said city; denying that such charge was unjust, unreasonable, or discriminatory, and averring that the same was lawful and in accordance with its regular published tariffs duly printed and posted as required by law.

5. This defendant further admits that said matters being at issue afterwards came on for hearing before said Commission; that defendants appeared by counsel, and evidence was introduced and arguments made on behalf of complainants and defendants, respectively; that thereupon the said Commission made and filed certain findings of fact, with conclusions thereon, as set forth in "Exhibit C" of complainant's bill herein; and thereafter duly issued its order and notice to the defendants, as set out in "Exhibit D" of said bill.

6. This defendant admits that petition for a rehearing of said cause and reconsideration of such findings and conclusions were afterwards made and filed by certain of the defendants, and that said Com-
128 mission, after hearing arguments thereupon, made and filed an additional report and opinion in said cause modifying certain of its former findings, etc., as set out in "Exhibit E" of complainant's bill herein, and forthwith issued its final order and notice in said cause to the defendants, as set out in "Exhibit F" of said bill.

7. And this defendant also admits that service of said several findings and reports and of the orders and notices aforesaid were duly made upon it prior to the filing of complain't's bill herein, to wit, prior to September 15th, A. D. 1898, and that said final order of the Commission (Exhibit F) has never been vacated, modified, or changed.

8. This defendant expressly admits that it still charges, demands, collects, and receives as a part of its regularly published transportation charges the said sum of two dollars ($2) per carload of live stock consigned over its road to the Union Stock Yards, Chicago, as compensation for its services in hauling, switching, and delivering such carloads of live stock from the terminus of its own road in said city of Chicago to said Union Stock Yards, over the tracks of other railroads, a distance of, to wit, more than seven miles. But it denies that said charge is unjust or unreasonable; denies that it charges or receives any other or further compensation for such service, and denies that the same unduly or unreasonably prejudices or disadvantages said city or any other locality or person.

9. And further answering, this defendant avers and shows to the court that its railway terminals and yards in said city of Chicago, w'ere live stock and other freight transported over its lines to Chicago would be delivered unless otherwise consigned, are situated at a long distance from the Union Stock Yards in said city, and that it does not own or control

any line reaching said yards; that whenever cars of live stock transported over its road are consigned to said Union Stock Yards this defendant is compelled, in order to make delivery at said yards, to switch and haul such cars from its own terminus in Chicago over the rails of two or more other railroads to said Union Stock Yards, a distance of, to wit, over seven miles, at an additional cost of, to wit, over two dollars for each car of such live stock; that for such additional service and haul, including unloading at said yards, it has, since June 1st, 1894, demanded, collected, and received said charge of $2 per carload upon all live stock so consigned to or delivered at said stock yards, and that said charge was and is just, reasonable, and not discriminatory, and was and is the only compensation charged, demanded, or received by it for such service, and that same was duly set forth in its regularly printed and public tariffs, made and filed as required in and by said "act to regulate commerce" and amendments.

All of which matters and things this defendant is ready and
129 willing to maintain and prove as this honorable court shall direct, and it prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, *Defendant*,
By CHAS. B. KELLER, *Its Solicitor*.

GEO. R. PECK, *Of Counsel*.

(Endorsed:) Filed June 8, 1899. S. W. Burnham, clerk.

In the circuit court of the United States for the northern district of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY; the Chicago and Great Western Railway Company; the Chicago and North-Western Railway Company; the Chicago, Milwaukee and St. Paul Railway Company; the Chicago and Alton Railroad Company; the Chicago, Rock Island and Pacific Railway Company; the Atchison, Topeka and Santa Fe Railway Company; the Wabash Railroad Company; the Illinois Central Railroad Company.

And now comes the Chicago and Alton Railroad Company, and for answer to the petition of the above petitioner, or to so much thereof as it is necessary for this defendant to make answer unto, respectfully states that it admits that it is a corporation organized and existing under the laws of the State of Illinois, and that said petitioner is created and established and yet exists and by virtue of an act of Congress of the United States entitled "An act to regulate commerce," approved February 4th, 1887, and the amendments to said act; that it admits that the defendants in said petition were as stated therein impleaded in a controversy

before the Interstate Commerce Commission upon the petition of
130 the Cattle Raisers' Association of Texas, and that said petition alleged that the defendants, in respect to transportation of live stock, were violating certain provisions of said act to regulate commerce, and particularly that the defendants in said petition imposed an unjust and unreasonable terminal charge at Chicago, Illinois, of two dollars per carload of live stock, as stated in said petition. It admits, as stated in said petition, that this defendant duly filed its answer to the said petition with said Commission, and that afterwards the Chicago Live Stock Exchange filed its intervening petition therein, and that this defendant filed with said Commission its answer to said intervening petition.

This defendant further admits, as stated in said petition, that afterwards the matters stated in said petition duly came on for investigation and hearing of testimony before said Commission, and that after said Commission had heard all of the testimony offered by the defendants and the arguments of attorneys said Commission found that the defendants had violated certain provisions of the said act to regulate commerce, and said Commission made a report in writing in respect thereof, which included the findings of fact upon which the conclusions of the said Commission were based, and that among other things it was therein found that said terminal charge at Chicago, Illinois, of two dollars per carload of live stock was unjust, unreasonable, and unlawful.

It admits that said Commission, as stated in said petition, duly formulated an order and notice in relation thereto, based upon the findings and determination of said Commission, wherein the defendants were required to cease or desist on or before the first day of April, 1898, from charging, demanding, collecting, or receiving, in addition to their regular published transportation charge, the sum of two dollars per carload of live stock as compensation for terminal service rendered in making delivery thereof at the yards of the Union Stock Yards and Transit Company in the city of Chicago, Illinois.

It admits that said Commission duly caused a properly authenticated copy of its report in respect thereto, together with said order and notice, to be delivered to this defendant.

It admits that afterwards the defendants filed with said Commission a petition for rehearing of said cause, and that said Commission, under an additional report and opinion in the same, thereby and therein modified certain of the findings of fact.

It admits that the said Commission formulated an order and notice in relation to the matters and things stated and charged in said petition for rehearing based upon the finding and determination of the said
131 Commission, and that thereafter the said Commission duly caused a properly authenticated copy of its report in that respect, together with said order and notice, to be delivered to this defendant.

It admits, as stated in said petition, that this defendant has violated and disobeyed the said order, and that it has from the time of the issue and service of the said order and notice refused to comply with the same, in this, that this defendant has not ceased or desisted from charging, demanding, collecting, and receiving, in addition to their regular published transportation charges, the sum of two dollars per car load of live stock, as compensation for services rendered in making delivery of live stock

at the stock yards of the Union Stock Yards and Transit Company, in the city of Chicago and State of Illinois.

Defendant further answering, avers that it has refused to comply with said order of the Commission for the reason that the service for which it makes said two dollars charge is an extra service rendered by it in addition to any service required to be rendered by it as a carrier of such live stock, and that the service is not contemplated or embraced in any undertaking, contract, or agreement, expressed or implied, on its part, in regard to the shipment of live stock to Chicago over its own line of railroad; and for the further reason that this defendant is not paid for such extra service by any charge therefor being included in any rate, through or otherwise, or in any other manner or form whatsoever.

Defendant further answering, avers that the service rendered by this defendant in taking care of live stock with its own engines and crews from the point where the railroad of this defendant connects with the railroad of said Union Stock Yards Company, over the tracks of said stock yards company to the Union Stock Yards in the city of Chicago, the said point of connection being about three miles distant from said yards; that the shipments of live stock were received by this defendant from connecting lines and from shippers at stations upon its own lines, that this defendant had stock yards facilities to take care of all live stock shipped by it to Chicago, but that there was no demand for such facilities on account of the Union Stock Yards being the common depot for the delivery of such stock, and where all shippers wanted the stock delivered; that the Union Stock Yards Company has always owned and operated the tracks leading from this defendant's railroad to said yards, and had always, up to June first, 1894, allowed this defendant to take the cars over its said tracks to the stock yards free of charge, and for that reason, up to that date, no charge was ever made of the shipper for the service of this defendant in taking said cars of live stock over said tracks to said yards, nor was any charge for such work ever included in
132 any through rate or in any rate made by this defendant, nor was the delivery at the Union Stock Yards of shipments of live stock to Chicago ever any part of the undertaking of this defendant, for the reason that said yards were not on the line of this defendant's railroad and for the further reason that the work of taking cars to the yards over the tracks of the Union Stock Yards Company might be discontinued at any time on account of the refusal of the stock yards company to any longer allow this defendant to do the work; that there is no way that the Union Stock Yards Company could be forced to allow this company to continue doing the work, and it might have stopped this defendant from doing the work at any moment; that it was understood by shippers that their live stock would be delivered at said yards because it had been always customary to deliver it there, but it was never any part of the undertaking of this defendant, either with connecting lines from whom it received stock, or with the shippers on its own line, that this defendant would deliver stock at said yards. If there was any understanding with connecting lines or with the shippers it was merely that the stock would be delivered at the yards. It was immaterial to the shippers who made the delivery or in what manner it was made; that the legal obligation to make delivery at such yards was with the Union Stock Yards Company

and the work done by this defendant, with the permission of said Stock Yards Company was and always had been an extra service, which it was not required to render, and which was and is in addition to the duty required of it as an intervening carrier, and was rendered by this defendant for the purpose of helping out said stock yards company, and to prevent an accumulation of cars of live stock in the yards of this defendant at the point of connection with the two railroads; that the service up to June 1st, 1894, of this defendant, in taking the cars to the yard, was purely gratuitous, and up to that date, on account of no charge being made of this defendant by said stock yards company, no charge was made or received by this defendant in any manner or form whatsoever for such service, either as part of the through rate or otherwise.

This defendant further answering, avers that through rates are made by the various railroad companies participating therein, each railway company receiving a fixed percentage of such through rate, and that, never, at any time, has the Union Stock Yards Company been a party to any through rate on shipments of live stock to Chicago, and it has never at any time, consented to any charge for service over its tracks being included in such through rate, and unless said stock yards company was a party to such through rate or consented to such a charge being included,
133 the railroad companies were without right to include such a charge in the through rate and they never did include such a charge in that rate, and the same condition has always existed in regard to rates made by this defendant to the shippers on its own line of live stock to Chicago; that in the making of said rates, through or otherwise, delivery at the Union Stock Yards was never taken into consideration in the making of said rates, and no charge was ever included therefor, either before or since June 1st, 1894.

Defendant further answering avers that said two-dollar charge made to shippers of live stock by this defendant since June 1st, 1894, was and is a service which the shipper required to be rendered for him in order to have his live stock delivered at said yards, and a service which the shipper had not paid for, as before stated, in any through or other rate charged him for the shipment of such live stock; that on account of the charge made by the stock yards company since that date the cost and expense to this defendant of doing the work, as shown before said Commission, was the sum of $2.05; that the charge of $2.00 made by it of the shipper for doing the work is therefore a fair and reasonable charge, and one which the shipper is bound to pay, and which this defendant can lawfully collect; that the testimony taken before the Commission and the conclusions fairly and reasonably deducible therefrom support all and every of the foregoing averments in regard to the manner and conditions under which live-stock shipments to Chicago were and are handled by this defendant.

This defendant therefore avers that the findings of said Commission that "the rate to Chicago on May 31st, 1894, for the shipment of live stock included, as it had for the last thirty years, a delivery at the Union Stock Yards, and that defendants were already receiving compensation for the service in that rate, and therefore ought not to charge for it a second time," are, so far as this defendant is concerned, not supported by the testimony taken before said Commission, and the said findings are, therefore, erroneous, and the said order so made by said Commission, having been based

upon said erroneous findings, this defendant is not obliged to comply with the same, and the said order is unlawful and void.

This defendant further answering avers that the said order of said Commission is vague, uncertain, and meaningless, in this, that it leaves it to this defendant to charge more or less than said sum of $2.00, and for that reason the said order is unlawful and void.

Defendant further answering avers that the finding of said Interstate Commerce Commission that said two-dollar charge is unreasonable
134 and unjust for the reasons stated in said finding has no binding force on this defendant; that under the law said finding can be availed of only in a suit brought by the shipper growing out of the imposition by this defendant against him of said charge, in which suit, as provided in said act entitled "An act to regulate commerce," said finding is prima facie evidence only of its correctness.

Defendant further answering avers that said Interstate Commerce Commission had no power or authority under the law to make or promulgate said order requiring this defendant to cease and desist from making and collecting said two dollars, or to file this petition, or to take any other steps of any kind to enforce this defendant to comply with its said order; that said order is beyond the powers of said Interstate Commerce Commission, and is an unlawful order, and this defendant is not bound by law to comply with the same, and this defendant prays it may have the same advantage of this defense under this answer as if the question had been raised by any other form of answer, plea, or demurrer.

Defendant further answering avers that the matters involved in said order are founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States; that the value in controversy exceeds the sum of twenty dollars, and amounts to many thousands of dollars, and being the aggregate sum of said two-dollar charge collected by defendant from shippers of live stock since June 1st, 1894; that the question to be determined is one of fact, whether said two-dollar charge is unreasonable and unjust for the reasons stated in the findings of said Commission, such findings under the law being prima facie evidence only of the matters stated in such finding, this defendant has the right to rebut the prima facie case by testimony showing that said charge is not embraced or included in any charge heretofore made by this defendant of shippers of live stock, and that said charge is not unreasonable or unjust in any other respect; that in such a case, under section 16 of an act approved March 2nd, 1889, entitled "An act to amend an act entitled 'An act to regulate commerce,'" approved February 4th, 1887, it is made lawful for any company or person interested in said order, and alleging a disobedience thereof, to apply by petition to the circuit court of the United State' as a court of law for redress, but nowhere under the law has said Interstate Commerce Commission power to file a petition to enforce a compliance with its said order in any court either of law or equity, and this defendant denies the jurisdiction of this honorable court to hear said petition or to make any order or render any judgment thereon. And this defendant prays it may have the same advan-
135 tage of this defense under this answer as if the question had been raised by any other form of answer, plea, or demurrer.

Further answering, this defendant says that it is not liable jointly with

any other of defendants to answer and defend in this cause, and that in respect of said charge of two dollars no other of the defendants has any interest in the sum so received by this defendant, nor has defendant any legal or equitable interest in the sums collected by other defendants, and in all of its doings concerning its charge of two dollars for the services specified and complained of it has acted individually and in no respect in legal association with any other of the defendants, wherefore it says that it should not be held jointly liable with any of its codefendants in regard to the matters set out in complainant's bill of complaint.

And this defendant, further answering, denies each and every allegation of said petition not herein expressly admitted or denied.

And having fully answered, it prays to be dismissed with its reasonable costs, etc.

THE CHICAGO & ALTON RAILROAD COMPANY,
By M. J. SCRAFFORD, *Its Solicitor.*

WM. BROWN, *Of Counsel.*

(Endorsed:) Filed June 8, 1899. S. W. Burnham, clerk.

136 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States for the northern district of Illinois, northern division.

THE INTERSTATE COMMERCE COMMISSION, PETITIONER,
vs.
THE CHICAGO, BURLINGTON AND QUINCY RAILROAD Company; The Chicago Great Western Railway Company; The Chicago and North-Western Railway Company; The Chicago, Milwaukee and St. Paul Railway Company; The Chicago and Alton Railroad Company; The Chicago, Rock Island and Pacific Railway Company; The Atchison, Topeka and Santa Fe Railway Company; The Wabash Railroad Company; The Illinois Central Railroad Company, defendant. } 25101.

The separate answer of The Chicago, Rock Island and Pacific Railway Company, one of the defendants in the above-entitled proceeding, to the petition of the Interstate Commerce Commission therein.

This defendant, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception or other objection that can or may be had or taken to the many errors, uncertainties, and other imperfections in said petition contained, for answer thereunto or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

1. It admits the allegations of the paragraphs of the petition numbered 1, 2, and 3.

2. This defendant admits that it filed with the Interstate Commerce Commission an answer by it to said petition of the Cattle Raisers' Association of Texas, a copy of which answer, marked "Exhibit A," is hereto

attached and made a part hereof; and that it also filed with said
137 Commission an answer by it to said intervening petition of the Chicago Live Stock Exchange, a copy of which answer marked "Exhibit B" is hereto attached and made a part hereof.

This defendant further admits that the said proceeding before the Interstate Commerce Commission came on for investigation and hearing, and in said petition herein averred, and that afterwards the said Commission made a report in writing in respect thereof which included certain findings of fact; but this defendant denies that the effect of said report and findings of fact is as set forth in paragraph 4 of the petition herein, and this defendant on the contrary avers that said report and findings of fact were such only as appear from the original thereof now on file in the office of said Interstate Commerce Commission; but this defendant admits that said report and findings of fact are correctly set forth in the copy thereof marked "Exhibit C," attached to the petition herein.

This defendant further admits that the said Commission formulated an order and notice which are correctly set forth in the copy thereof, marked "Exhibit D," attached to the petition herein; but this defendant avers that said order and notice have only such force and effect as are given to the same by law, and this defendant denies that said order was or is a lawful order or requirement. This defendant admits that copies of the said report and findings of fact and of the said order and notice of the said Commission were duly delivered to this defendant.

This defendant further admits that it petitioned the said Commission for a reargument of said matter, but avers that the scope and purpose of its said petition for a reargument were such only as appear on the face thereof and are shown by the copy of said petition for reargument, marked "Exhibit C" and attached hereto as a part hereof. This defendant admits that arguments were had on said petition for reargument and that thereupon said Commission modified its report and findings of fact, which said modifications this defendant admits are correctly set forth in "Exhibit E" to the petition herein. This defendant further admits that the Commission thereupon formulated a further order and notice, a copy of which is correctly set forth in "Exhibit F" attached to the petition herein, and that copies thereof were delivered to this defendant; but this defendant denies that said order or notice was or is a lawful order or requirement. This defendant admits that it has refused to obey said orders of said Commission and each of them.

3. This defendant denies that said charge of two dollars per car made by it upon carloads of live stock delivered at the Union Stock Yards in Chicago has been or is unreasonable, unjust, or unlawful; or that
138 said charge has been or is excessive in amount; or that said charge or the aggregate charges of defendant for transportation of live stock from any place to the Union Stock Yards at Chicago have been or are to any extent unjust or unreasonable in themselves or relatively to transportation charges on live stock to destinations other than Chicago; or that said two-dollar charge or the aggregate charges of defendant for the transportation of live stock from any place to the Union Stock Yards at Chicago have been or are an unjust discrimination against Chicago in comparison with any other destination of live stock shipments or against

shippers of live stock to Chicago in comparison with shippers of live stock to any other destination or against receivers of live stock at Chicago in comparison with receivers of live stock at any other destination, or against the live-stock traffic in comparison with any other description of traffic; and this defendant denies that while imposing said two-dollar charge at all it has omitted to charge it to anyone whomsoever for a like and contemporaneous service, and this defendant alleges that said charge has been made uniformly and alike upon all shipments of live stock to the Union Stock Yards at Chicago ever since the charge was first imposed in 1894; and this defendant denies that in imposing said two-dollar charge it has at any time subjected any person, company, firm, corporation, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, or has at any time made or given to any person, company, firm, corporation, locality, or description of traffic any undue or unreasonable preference or advantage; and this defendant denies that by making said two-dollar charge on live stock delivered at the Union Stock Yards at Chicago, it has violated or does violate section 1 or section 2 or section 3 or any other section of the interstate-commerce act.

4. This defendant alleges that it neither has owned or controlled nor does own or control any line of railroad leading to or terminating at the Union Stock Yards of the Union Stock Yards and Transit Company in the city of Chicago, but that a line of railway track owned by the Union Stock Yards and Transit Company extends from a point of connection with the line of this defendant at or near what is now Fortieth street in the city of Chicago to said Union Stock Yards, and that the only means of access to said stock yards for live stock coming into the city of Chicago over the railroad of this defendant has been and is by means of the said tracks of the Union Stock Yards and Transit Company from their point of connection with this defendant's road to said stock yards; that on June 1st, 1894, said Union Stock Yards and Transit Company required that for any future use of its said tracks in reaching said stock yards this
139 defendant company should pay a rental of forty cents per car each way for each car of live stock delivered at the stock yards, this charge of eighty cents per car being in addition to the charge at all times imposed of twenty-five cents per car for unloading live stock at said stock yards; that in addition to paying the total of eighty cents per car for the aforesaid charges of the Union Stock Yards & Transit Company, it costs and has, since June 1st, 1894, cost this defendant the further expense of the actual transportation work for each car of live stock delivered at the Union Stock Yards in hauling the same from the aforesaid junction of the tracks of this defendant with the tracks of the Union Stock Yards & Transit Company to said stock yards, and that the total cost to this defendant of such service in hauling live stock cars to said stock yards and delivering them thereat is and at all times since June 1st, 1894, has been almost if not quite two dollars per car; that the rates for transportation of live stock to Chicago had for many years before June 1st, 1894, been steadily declining and had at that date become very low, and that since June 1st, 1894, for numerous reasons, including strenuous and diversified competition, a further decline has taken place in defendant's rates for the transportation of live stock to Chicago from a great portion

of the places of shipment from which live stock is hauled over this defendant's line to Chicago, such decline since June 1st, 1894, in the rates for transportation of live stock to Chicago (wholly apart from said two-dollar charge) amounting to more than two dollars per carload; that the places from which the rates to Chicago elsewhere than at said stock yards, and not including said two-dollar charge for delivery at the stock yards, have so declined embrace a great part of the territory concerning shipments from which complaint is made in this proceeding; that on June 1st, 1894, when said rental charges were first imposed, as aforesaid, by the Union Stock Yards & Transit Company, this defendant believed, and the fact was, that its live-stock rates to Chicago were already so low as not to be a reasonable and sufficient compensation to defendant for the service performed in transporting live stock to said Union Stock Yards, and that defendant's said live-stock rates were at least two dollars lower than would be reasonable for such transportation to the said Union Stock Yards; that it thereupon made, printed, and filed with the Interstate Commerce Commission, and duly published and posted in two public and conspicuous places in every depot, station, or office of this defendant where freight was received for transportation, in such form that it should be accessible to the public and could be conveniently inspected,
140 and has ever since kept on file and duly published and posted, a tariff concerning its charges for transportation of live stock to the Union Stock Yards in Chicago or elsewhere in Chicago, wherein and whereby it was and is announced to the public that defendant's charges thereafter for transportation of live stock to the Union Stock Yards at Chicago would be two dollars per carload more than the ordinary live-stock rates to Chicago, and that for such ordinary live-stock rate to Chicago defendant would not transport live stock to said Union Stock Yards and deliver it thereat; that since June 1st, 1894, the ordinary or flat Chicago live-stock rate has not been made for live stock to be transported and delivered at said stock yards, and it has been distinctly declared by the tariffs of this defendant that said ordinary or flat stock rate to Chicago was not imposed for and did not include any service in transporting live stock over the tracks of the Union Stock Yards & Transit Company to said stock yards or delivering stock at such yards; that said charge of two dollars per car made by defendant since June 1st, 1894, on live stock transported to the Union Stock Yards, has been made and is made only for the service of transporting from the aforesaid junction of this defendant's road with the tracks of the Union Stock Yards & Transit Company over said lat'er tracks to said Union Stock Yards and for delivery at said yards, and that no other charge than said two-dollar charge has at any time been made or is made by this defendant for any portion of said service in transporting live stock from the aforesaid junction of this defendant's road with the tracks of the Union Stock Yards & Transit Company to said stock yards and delivery at said yards.

5. This defendant denies that it has or at any time in the last ten years has had any ownership of or interest in the Union Stock Yards & Transit Company or its railroad or other property.

6. This defendant alleges that much of the greater part of the shipments of live stock over its road to Chicago, either at said Union Stock Yards or elsewhere in that city, has, since June 1st, 1894, consisted and

does still consist of shipments from places not upon the road of this defendant but upon other connecting lines of railroad, and has been carried and still is carried to Chicago upon a joint rate made by this defendant with a connecting carrier or carriers over whose road or roads the shipment travels, and that such joint rate for such shipments has been and is shared by this defendant with such connecting carrier or carriers upon agreed percentages, but said two-dollar terminal charge imposed for the transportation of live stock from the aforesaid junction of this defendant's road with the tracks of the Union
141 Stock Yards & Transit Company in Chicago to said Union Stock Yards has been made and is made solely by this defendant and not jointly with any connecting carrier, and has been at all times and is received solely and wholly by this defendant, being compensation to this defendant for the service aforesaid of transporting over the tracks of the Union Stock Yards & Transit Company to said Union Stock Yards and delivery at said stock yards of such live stock, which at all times has been performed and still is performed solely and entirely by this defendant; and this defendant alleges that any reduction of said two dollar charge must and will fall wholly upon this defendant, while any reduction of the general or flat live-stock rate to Chicago must and would, in the case of all shipments made over the connecting roads of this defendant and a connecting carrier or carriers, fall upon all such connecting carriers and be shared by them in the proportion of their percentages in the joint rate to Chicago.

7. This defendant alleges that heretofore, to wit, some time in the year 1895, the property of the Atchison, Topeka & Santa Fe Railroad Company, being the predecessor of the Atchison, Topeka & Santa Fe Railway Company, one of the defendants herein, was in the hands of receivers of the United States circuit court for the northern district of Illinois, and that in or about said year 1895 the members of said Chicago Live Stock Exchange, which filed intervening petition as aforesaid, in this proceeding before the Interstate Commerce Commission did petition said United States circuit court for an order directing its receivers, who were in possession and in charge of the operation of the railway of said Atchison, Topeka & Santa Fe Railroad Company, to discontinue the making of said two dollar terminal charge upon live stock delivered to said Union Stock Yards, and did in their said petition to said circuit court allege all the facts set forth in the petition of the Chicago Live Stock Exchange attached to the petition herein as "Exhibit B;" and that the said Atchison, Topeka & Santa Fe Railroad Company, and the receivers thereof, answered said petition, and said United States circuit court then and there acquired and had jurisdiction of the parties to said petition and of the subject-matter thereof; that a trial was had upon said petition and answer and the facts proven, which were the same facts that are set forth herein and such proceedings were had by and before said United States circuit court for the northern district of Illinois and by and before the United States circuit court of appeals for the seventh circuit that said United States circuit court of appeals duly adjudged and decreed
142 that said Atchison, Topeka & Santa Fe Railroad Company and its receivers had a right under the tariffs of said company, which were identical with the tariffs made by this defendant as aforesaid, con-

cerning the imposition of said terminal charge, after June 1st, 1894, and under the facts appearing to said United States circuit court of appeals, which were the same as the facts herein presented, to impose said two dollar terminal charge, and judgment was duly entered and given in said matter in favor of said Atchison, Topeka & Santa Fe Railroad Company and its receivers; that this defendant hereby refers for greater certainty to all the records and proceedings in the matter of said petition of the members of the Chicago Live Stock Exchange to said United States circuit court for the north district of Illinois, both in said United States circuit court for the northern district of Illinois and in said United States circuit court of appeals for the seventh circuit, and asks leave to make such records and proceedings a part hereof and to have them so considered; and that said judgment of the United States circuit court of appeals in said matter is an adjudication that this defendant has a right to impose the said two dollar terminal charge in addition to its ordinary charge for hauling live stock to the city of Chicago, for delivery elsewhere than at said Union Stock Yards.

8. This defendants repeats here, as if now specifically stated, each and all of its allegations and denials contained in its answer to the original petition or complaint before the Interstate Commerce Commission in this proceeding, of which answer a copy, marked "Exhibit A," is attached, as already hereinbefore stated, and is made a part hereof.

9. This defendant prays the same benefits as if it had demurred to the said petition herein; and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE CHICAGO, ROCK ISLAND AND
PACIFIC RAILWAY COMPANY,
By ROBT. MATHER, *Its Solicitor.*

143 EXHIBIT A.

Before the Interstate Commerce Commission.

THE CATTLE RAISERS' ASSOCIATION OF TEXAS, complainants,
vs.
THE FORT WORTH & DENVER CITY RAILWAY Company et al., defendants.

Now comes the Chicago, Rock Island & Pacific Railway Company, one of the defendants herein, and for answer to said complaint says:

I. It has no knowledge or information with reference to the averments of paragraph one of said complaint, and therefore denies the same.

II. It is a common carrier engaged in the transportation of property by railroad, either over its own line or by traffic arrangement with the Chicago, Rock Island & Texas Railway Company, from points in the States of Texas, Kansas, Nebraska, Colorado, and Indian Territory, to Chicago, in the State of Illinois. It is informed and believes that the Union Stock Yards & Transit Company is not a common carrier so engaged in the transportation of property to Chicago, but is the owner of a railroad located in the city of Chicago; but this defendant denies

that the said railroad of said Union Stock Yards & Transit Company is operated and used under any contract or agreement by this defendant in such transportation of property to Chicago except as hereinafter set forth.

III. It admits that the said Union Stock Yards and Transit Company now owns and for many years has owned yards, pens, and chutes, and railway approaches thereto, in the city of Chicago, but denies that same has been or are used by this defendant as a common or union depot or station for that city for the reception and delivery of live stock and the shipment and forwarding of that class of railway traffic. It denies that it has been constantly or otherwise held out by this defendant that its live-stock depot or station in Chicago was and is in the Union Stock Yards in that city, and denies that live stock shipped to Chicago and merely so billed over the line of this defendant has been and is certain to be delivered such depot or station in Chicago without any instructions from shippers or statement on the railway billing whatsoever. It has no knowledge or information as to the purposes of the said Union
144 Stock Yards and Transit Company in the establishment of its stock yards in the said city of Chicago, but denies that this defendant encouraged and promoted any such arrangement for a common or union live-stock depot as is set forth in the third paragraph of said complaint. It has no knowledge or information as to the revenues derived by said Union Stock Yards and Transit Company from any source whatever. It alleges that the line of railway of this defendant extends in a northerly direction through the city of Chicago to its northerly terminus at Van Buren street in said city of Chicago, where is located its Chicago passenger depot, the Chicago freight depot of this defendant being located at or near Taylor street in said city of Chicago. It alleges that at the time the said Union Stock Yards and Transit Company established its said stock yards the said Union Stock Yards and Transit Company built a line of railway from its said stock yards to a point of connection with the tracks of this defendant at or near what is now Fortieth street in said city of Chicago; that at the time of the location of said stock yards and the construction of said track of said Union Stock Yards and Transit Company and the connection thereof with the tracks of this defendant the said stock yards and the said point of connection were entirely outside of the limits of the said city of Chicago, said point of connection being about four miles south of the freight depot or station of this defendant in said city of Chicago. From the time of the construction of said railway track of said Union Stock Yards and Transit Company and the connection thereof with the tracks of this defendant until about the first day of July, A. D. 1894, this defendant, by leave and licence of said Union Stock Yards and Transit Company and without charge therefor by said company, ran its engines and cars used in the transportation of live stock consigned to said Union Stock Yards over said tracks to said stock yards, making no charge to the consignor or consignees of live stock so consigned and carried for such transportation from its line of road over the track of said Union Stock Yards and Transit Company to said stock yards; that on or about the first day of June, A. D. 1894, said Union Stock Yards and Transit Company revoked said license and

refused longer to permit this defendant to move its engines and cars over the said tracks of said Union Stock Yards and Transit Company except upon the payment of a toll or charge of forty cents per car each way, making a total toll or charge of eighty cents on each carload of freight transported by this defendant and consigned to and delivered at said Union Stock Yards and Transit Company's stock yards. Thereupon, on to wit, the 9th day of July, A. D. 1894, this defendant in form pre-
145 scribed by law established and published a switching or terminal charge of two dollars per car on all carload shipments of freight including carloads of live stock received from or delivered to said Union Stock Yards and has since charged, collected, and received the said terminal or switching charge of two dollars per car on each and every carload of freight, including live stock transported by this defendant from its line of road at the connection aforesaid over the track of said Union Stock Yards and Transit Company to said stock yards, and this defendant avers that said charge is lawful and reasonable. This defendant denies that it entered into any agreement whatsoever with said Union Stock Yards and Transit Company with reference to said charge of forty cents per car in the manner set forth in paragraph 3 of said complaint.

IV. It denies that the established aggregate rates and charges of this defendant for the transportation over its line of cattle and other live stock from shipping points in Texas and other Western and Southwestern States to Chicago, including said terminal or switching charge of two dollars per car are to the extent of said two dollars per car or to any extent unjust and unreasonable in themselves or relatively as compared with transportation charges on live stock over its line or connecting line from the various points of shipment to destinations other than Chicago. It denies that said rates to the extent mentioned or to any other extent unjustly discriminate against complainant, its members, and other owners and shippers of live stock and consignees thereof at Chicago, and denies that is subjects them and their traffic to undue and unreasonable prejudice and disadvantage in favor of and to the undue and unreasonable preference and advantage of shippers of live stock and their traffic to live-stock markets or destinations other than Chicago, and in favor of consignees at such other markets or destinations. It denies that said rates of this defendant are unjustly discriminating in favor of and to the undue and unreasonable perference and advantage of itself, or that said rates or the acts of this defendant in connection therewith are in violation of sections one, two, three, and six (or either of them) of said act to regulate commerce.

It denies all other allegations of said complainant not herein specifically admitted or denied.

Wherefore this defendant prays that said complaint may be dismissed.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY,
By (Sgd.) ROBERT MATHER, *General Attorney.*

146 STATE OF ILLINOIS, *County of Cook, ss*:

J. M. Johnson, of said county, being duly sworn, on oath says that he is freight traffic manager of the Chicago, Rock Island and Pacific

Railway Company; that he has read the foregoing answer and the facts therein stated are true as he verily believes.

(Sgd.) J. M. JOHNSON.

Subscribed and sworn to before me this 18th day of September, A. D. 1896.

[SEAL.] (Sgd.) WALTER J. GUNTHORP,
Notary Public.

EXHIBIT B.

Before the Interstate Commerce Commission.

THE CATTLE RAISERS' ASSOCIATION OF TEXAS, complainant,
vs.
THE FORT WORTH & DENVER CITY RAILWAY Company et al., defendants.

The Chicago Live Stock Exchange, intervenor.

Now comes the Chicago, Rock Island & Pacific Railway Company, one of the defendants herein, and for answer to the intervening petition of the said The Chicago Live Stock Exchange, says:

1. It makes its answer to the said complaint heretofore filed in said cause its answer in part to said intervening petition.

2. Protesting that it is not called upon in this answer to respond to the arguments which compose the said intervening petition, it denies that the assessment and collection of said two-dollar ($2.00) terminal or switching charge constitutes an unjust discrimination or an undue or unreasonable preference under section two, (2) and three (3) of the act to regulate commerce or either of said sections.

It denies all allegations of said intervening petition not herein specifically admitted or denied.

147 Wherefore this defendant prays that said intervening petition may be dismissed.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,
By , *General Attorney.*

STATE OF ILLINOIS, *County of Cook, ss:*

J. H. Johnson, of said county, being first duly sworn, on oath says that he is the freight traffic manager of the Chicago, Rock Island and Pacific Railway Company; that he has read the foregoing answer, and that the things therein stated are true, as he verily believes.

Subscribed and sworn to before this 18th day of March, A. D. 1897.

Notary Public, Cook County, Illinois.

EXHIBIT C.

Before the Interstate Commerce Commission.

CATTLE RAISERS' ASSOCIATION OF TEXAS
vs.
FORT WORTH & DENVER CITY RAILWAY COMPANY et al.

Now comes the Chicago, Rock Island and Pacific Railway Company, one of the defendants herein, and makes application for a rehearing in the above-entitled cause.

And for cause of said application, and in pursuance of the rule of the Commission, this respondent states that the following findings of fact or conclusions by law contained in the report of the Commission herein are erroneous, to wit:

1. The finding of fact of the conclusion of law that "the exaction of a terminal charge of more than $1.00 per car is in violation of the first and possibly of the third section of the act, and that the defendants ought not to exact more than this sum."

148 2. The conclusion of law and order of the Commission "directing the carriers (respondents herein) to cease and desist from charging and collecting the present charge of $2.00."

And for further cause for this application this respondent states that the complainant and intervening petitioner having admitted, on the hearing of this cause, that the $2.00 terminal charge is a reasonable charge, provided any charge could legally be made for the terminal service, the question of the reasonableness of this charge was not seriously considered in the arguments heretofore submitted to the Commission. The finding and order of the Commission, therefore, to the effect that the carriers (respondents herein) may not lawfully charge more than $1.00 for the terminal service has been made without due and proper hearing.

Wherefore this respondent prays that the question of the reasonableness of the $2.00 terminal charge be opened to further argument by the rehearing herein.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,
By , *General Attorney.*

STATE OF ILLINOIS, *County of Cook, ss:*

Robert Mather, of said county, being duly sworn, on oath says that he is the general attorney of the Chicago, Rock Island and Pacific Railway Company, one of the respondents in this procedure, and that the matters set forth in the foregoing petition are true, as he verily believes.

Subscribed and sworn to before me this day of , A. D. 1898.

Notary Public.

(Endorsed:) Filed June 8, 1899. S. W. Burnham, clerk.

149 In the circuit court of the United States, northern district of Illinois, northern division.

THE INTERSTATE COMMERCE COMMISSION *vs.* CHICAGO, BURLINGTON AND QUINCY RAILROAD Company, Chicago Great Western Railway Company, Chicago and North-Western Railway Company, Chicago, Milwaukee and St. Paul Railway Company, Chicago and Alton Railroad Company, Chicago, Rock Island and Pacific Railway Company, The Atchison, Topeka and Santa Fe Railway Company, Wabash Railroad Company, and the Illinois Central Railroad Company, defendants.	In equity. 25101.

Separate answer of the Atchison, Topeka and Santa Fe Railway Company, one of the above-named defendants, to the bill of complaint of said plaintiff.

This defendant, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception or otherwise that could or might be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering, saith—

This defendant admits that it is a corporation organized and existing under the laws of the State of Kansas, and that it is a common carrier, engaged in transportation of passengers and property, through and across the following States and Territories of the United States, viz: Illinois, Iowa, Missouri, Kansas, Oklahoma, Colorado, and New Mexico.

It further admits that on the first day of September, 1896, it was duly impleaded in a controversy before the Interstate Commerce Commission, upon the petition of the Cattle Raisers' Association of Texas, and that a copy of said petition, marked "Exhibit A," attached to the bill of complaint, is a correct copy of said petition.

This defendant admits that it duly filed its answer to said petition, being the joint answer of itself and the Gulf, Colorado &
150 Santa Fe Railway Company, and it attaches hereto a true and correct copy of said answer, marked "Exhibit A," and made a part hereof and prays that the same may be taken and read as a part of this defendant's answer.

This defendant further admits that on the tenth day of March, 1897, the Chicago Live Stock Exchange filed its intervening petition in said cause, alleging in substance violations of the law as set forth in said original petition, and that "Exhibit B," attached to the bill herein, is a true and correct copy of said intervening petition, and this defendant says that it duly filed its answer to said intervening petition, a true and correct copy of which said answer is attached hereto, marked "Exhibit B," and made a part of this answer, and defendant prays that the same may be taken and read as a part hereof.

This defendant admits that the matters in controversy came on for hearing before said Commission and testimony was taken therein, and that

said Commission made a report in writing in respect thereto, which included the finding of facts and the conclusions of said Commission, and that a true and correct copy of the report of said Commission is attached to the bill herein, marked "Exhibit C;" but this defendant denies that said Commission found that the terminal charge at Chicago of two dollars per carload of live stock was unreasonable, and this defendant says that many of the findings of fact in said report were wholly unsupported by the evidence, and were contrary to the evidence introduced before said Commission.

This defendant admits that the Commission formulated its order and the notice set forth in "Exhibit D" of the bill herein, and that the same was served upon this defendant; but this defendant says that the said order is and was unauthorized, unreasonable, and wholly unsupported by the evidence introduced before said Commission, or by the findings of fact made in the report of said Commission.

This defendant admits that afterwards it filed its petition for rehearing of said cause and reconsideration of the findings and conclusions of said report and order as aforesaid, and that afterwards, on the 4th of August, 1898, whether fully advised in the premises or not, this defendant is unable to say, made an alleged additional opinion and report, a true and correct copy of which is attached to said bill, marked "Exhibit E," and defendant says that such additional report is in many respects inconsistent with and wholly unsupported by the evidence, and the conclusions of said Commission are wholly unwarranted by the facts found or by the evidence introduced before said Commission.

151 This defendant admits that the said Commission upon the determining of said petition for rehearing formulated another order and notice, a true and correct copy of which is attached to the bill herein, marked "Exhibit F;" but this defendant says that the said additional order is unlawful and unauthorized, beyond the power of said Commission to make, and is and was wholly unsupported by the evidence, and is inconsistent with and contrary to the material facts found by said Commission.

This defendant denies that either it or its predecessor, the Atchison, Topeka & Santa Fe Railroad Company, or the receivers of said last named company, at any time owned any stock in the Union Stock Yards & Transit Company, or were interested in any manner in the promotion of said company or in the promotion of Union Stock Yards at Chicago.

This defendant admits that on and after the first day of June, 1894, the Union Stock Yards and Transit Company imposed a toll or charge upon the various railroad companies using the tracks of said Union Stock Yards and Transit Company in reaching said Union Stock Yards from the terminus of the lines of the various railroads in Chicago; but this defendant says that prior to said date the use of said tracks was given to the various railroads free of charge; that the rates for the transportation of live stock to Chicago had constantly decreased; that the same were not reasonable compensation for the service performed at such time; that theretofore the service of transporting live stock from the terminus of the various railroads, including the railroad of the Atchison, Topeka & Santa Fe Railroad Company, to the Union Stock Yards had been performed gratuitously, and that when said toll was imposed by said Union

Stock Yards & Transit Company for the use of said tracks the receivers of said Atchison, Topeka & Santa Fe Railroad Company deemed that they could not perform the service of transferring the live stock from the end of their line to the Union Stock Yards gratuitously, and determined then and there to make a reasonable charge for the same; that thereupon said receivers amended and changed their tariff charges so as to show separately the charge for the transportation of live stock to the terminus of its line at Corwith, in the city of Chicago, and the charge in addition thereto for switching cars of two dollars per car from the terminus of said line to the Union Stock Yards; that on the first day of January, 1896, this defendant, having very shortly prior thereto purchased the railroad of the Atchison, Topeka & Santa Fe Railroad Company at foreclosure sale, commenced the operation of said railroad to the city of Chicago, but before commencing such operation it filed with the said Interstate
152 Commerce Commission its circular or letter adopting the tariffs theretofore made by the receivers in charge of said property and distinctly showed and stated that the rate to Chicago was only for delivery to its station at Corwith, and that an additional charge would be made for switching of transferring each car of live stock from the terminus of its line at Corwith to the said Union Stock Yards, amounting to the sum of two dollars per car; and said defendant says that said sum of two dollars per car is in all respects reasonably low for the service performed, and that the through rate to Chicago, with the addition of said two dollars per car, is as reasonably low as shippers could ask or demand, and is a reasonably low price for the service performed.

This defendant admits that while stock intended to be sold upon the market must go to the Union Stock Yards in said city of Chicago, yet it says that other stock destined for Chicago merely, not intended for sale, might well be delivered at said station of Corwith, where this defendant has stock yards sufficient to accommodate all stock designed or intended or requested to be delivered at such point.

This defendant says that its tracks at said Corwith do not connect directly with the tracks of said Union Stock Yards & Transit Company, but that it obtains such connection only over the tracks of other railroad companies, for which, in the transfer of live stock over the same for said Union Stock Yards it is required to pay a toll for the use of said tracks to said other companies in addition to the toll imposed by said Union Stock Yards & Transit Company, and that it is required to haul cars from the terminus of its line at Corwith to said Union Stock Yards, a number of miles, and that in performing such service it is required to use, and does use, a separate engine and separate crew therefor.

This defendant says that its line of railroad does not pass through East St. Louis, Omaha, or Sioux City, but that its line of railroad does pass through Kansas City. It admits that at Kansas City it does not make a separate charge for terminal or switching service, as at Chicago, but says that the cost of the same is absorbed in its live-stock rates to Kansas City, and that the circumstances and conditions which have obtained and still obtain at Kansas City are different from the circumstances and conditions which have obtained and do obtain at the city of Chicago. It further says it is unable to make any such separate charge at Kansas City by reason of competition with other railroad lines which do not enter the

city of Chicago, which lines refuse to make any such terminal or switching charge; that some of the railroads in Kansas City have
153 tracks up to the stock yards at said city, and are enabled to make delivery by means of their own tracks at the stock yards at such point, or within a very short distance, and that no charge for the use of the rails of the stock yards company is made at such city.

This defendant denies that there is any undue preference given by it to said Kansas City or to any other live stock market against the city of Chicago, or that it subjects said city of Chicago to any undue or unjust prejudice or disadvantage, as against any other live stock market; and this defendant says that the Cattle Raisers' Association of Texas was not in any manner discriminated against or in any manner injured or damaged by the imposition of the terminal or switching charge in the city of Chicago complained of. That the members of said association were treated in the same manner as all other shippers to said city of Chicago, and that the petition of said Cattle Raisers' Association of Texas filed with said Commission is wholly without merit or justification.

This defendant denies that said switching or terminal charge as aforesaid of two dollars per car is unjust, unreasonable, or unlawful in any respect, and it denies that the service for which said charge or any portion thereof was or has been made since the first day of June, 1894, is included in the rate for the transportation of live stock to Chicago.

This defendant denies that it makes the Union Stock Yards the depot for the delivery of all live stock, but says, on the contrary, that it only delivers such live stock at such depot when the same are intended or designed by the shipper or consignee for delivery at such place.

This defendant emphatically and specifically denies that this terminal charge or charge for switching of two dollars per car or any part thereof is made for a service which is paid for in the rate to Chicago, and that the intimation of the Commission in its report is wholly without foundation in fact or in law, and is contrary to the evidence introduced before the said Commission and to the tariffs of this defendant.

This defendant denies that it consented that the Commission might make a rate based upon service performed by the shortest line to the stock yards or that it stated on the rehearing that it did not ask for a modification of the order, so as to be enabled to retain the amount actually paid for the service rendered.

This defendant denies that any undue prejudice is created against the market at Chicago by the imposition of such switching or terminal charge and that the imposition of such charge is without justification, but on the contrary, avers that the same is lawful and is justified.

This defendant further says that shortly after the making of such
154 switching or terminal charge to the Union Stock Yards by the receivers of the Atchison, Topeka & Santa Fe Railroad Company Wilson T. Keenan and a large number of live stock commission men, members of the Chicago Live Stock Exchange, and virtually representing it, sought to have the court wherein such receivers were appointed declare such charge unlawful and unauthorized, but that the charges and tariffs so made have been sustained and held to be lawful by the circuit court of appeals for the 7th circuit, in said cause, and that in said proceeding, instituted by said Keenan, as aforesaid, the material facts, matters, and things in controversy were set forth and in controversy in said suit.

And this defendant denies all other matters and things in said bill of complaint set forth inconsistent with the answer herein filed and the answers herein made in said proceedings before the Interstate Commerce Commission, and denies all and all manner of unlawful combination and confederacy charged by said bill without this, that there is any other matter, thing, or act in said bill contained material or necessary for this defendant to make answer to, not herein and hereby well and completely answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant.

All of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court may direct, and humbly prays to be hence dismissed, with its reasonable costs and charges, in this behalf most wrongfully sustained.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
[SEAL.] By ED. KENNA, *Its First Vice-President.*
Attest:

C. WILDER, *Secretary.*

ROBERT DUNLAP,
Solicitor for the Defendant,
The Atchison, Topeka & Santa Fe Railway Company.

155 EXHIBIT A.

Before the Interstate Commerce Commission.

THE CATTLE RAISERS ASSOCIATION OF TEXAS, complainant,
versus
THE FORT WORTH & DENVER CITY RAILWAY Company, and others, defendant.

Answer of the Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company.

The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, two of the above-named defendants, for answer to the complaint filed in the above cause, say that the Gulf, Colorado & Santa Fe Railway Company is a corporation organized under the laws of the State of Texas and operates a line of railroad from Galveston, Texas, to Purcell, in the Indian Territory, with several branches to said main line in the State of Texas, but said Gulf, Colorado & Santa Fe Railway Company does not participate in or receive any portion of the $2 charge for switching or transferring cars to the Union Stock Yards in Chicago complained of in said complaint; that the Atchison, Topeka & Santa Fe Railway Company is a corporation existing under the laws of the State of Kansas, and operates a line of railroad from a connection with the Gulf, Colorado & Santa Fe Railway Company at Purcell, in the Indian Territory, by way of Kansas City and Atchison, to Chicago, Illinois, and also a line extending from Albuquerque and connecting with its aforesaid line at Newton, in the State of Kansas.

Said defendants say that they are not advised of the character or business of the complainant association and do not admit the same.

They say that they are advised that the Union Stock Yards & Transit Company is not a common carrier engaged in the transportation of property to Chicago, but is the owner of a railroad and railroad tracks located in the said city of Chicago.

They deny that the railroad of the said Union Stock Yards & Transit Company is operated or used under any contract or agreement by this defendant in the transportation to Chicago, except as hereinafter stated.

They admit that the Union Stock Yards & Transit Company
156 owns and for many years has owned stock yards, pens and chutes, and railway tracks approaching thereto, in the city of Chicago, but deny that the same has been used as a union depot or station, or as its station for it in the city of Chicago for the reception or delivery of live stock, but they allege that they make deliveries at such place when shipment is intended by the shipper or consignee to be delivered at such stock yards.

They aver that many shippers, including the complainant, are desirous of using the many facilities furnished at said Union Stock Yards, including, as it does, a place for the marketing of their cattle, and that the shipments made by the members of the complainant association are shipments of cattle intended for sale and are such as are intended for delivery at the Union Stock Yards, and said members have not requested delivery upon the line of this defendant's railroad in the city of Chicago.

They deny that they have held out to shippers that their live-stock depot in the city of Chicago was or is the Union Stock Yards in that city, but on the contrary aver that the members of the complainant association have adopted said Union Stock Yards as their own by desiring delivery to be made at such yards.

They deny that live stock shipped to Chicago and simply so billed is certain to be delivered at the Union Stock Yards, unless the same be intended by the consignor or consignee to be delivered at such stock yards.

They deny that they have any knowledge of a consolidation of stock yards in Chicago, and deny that they encouraged or promoted any such arrangement, if any, for a common or union live-stock depot.

They deny that on the 1st day of June, 1894, rates for transportation of live stock to Chicago were arbitrarily advanced by establishing a terminal or switching charge at Chicago of $2 per car.

They deny that they have not been subjected to increased charges or expenses in the handling or transportation of cattle at Chicago, especially those intended for transfer and delivery at the Union Stock Yards.

They deny that they entered into any agreement with the Union Stock Yards & Transit Company by which they voluntarily agreed to pay a toll upon each car for the use of the tracks of the Union Stock Yards & Transit Company, nor was any such agreement made, voluntarily or otherwise, for the purpose of exacting an additional charge of $2 per car from shippers or consignees of live stock.

They deny that the Atchison, Topeka & Santa Fe Railway Company
157 makes use of the Union Stock Yards as its common live-stock depot in Chicago, or that it promotes consignments to such stock yards.

On the the contrary they aver that between December, 1893, and January, 1896, the line of railroad now operated by the Atchison, Topeka

& Santa Fe Railway Company was, during such period, operated by receivers duly appointed to operate the railroad of the Atchison, Topeka & Santa Fe Railroad Company, and that since January 1st, 1896, the Atchison, Topeka & Santa Fe Railway Company, having become the purchaser under foreclosure proceedings of the railroad of the Atchison, Topeka & Santa Fe Railroad Company, has operated the same, and that the line of railroad of the Atchison, Topeka & Santa Fe Railroad Company when first extended and built to the city of Chicago was built through its station at Corwith in said city, with its main freight depot on 12th street, and at no time was its line built or extended to the Union Stock Yards in said city of Chicago; that at the time of the construction and extension of such railroad to Chicago the Union Stock Yards had been established by the Union Stock Yards & Transit Company, a corporation duly authorized under its charter to construct such stock yards, hotels, and other facilities and accommodations, including the live-stock exchange for the accommodation of live stock in said city, and also to construct railway tracks, so as to connect with the tracks of various railroads running into the city of Chicago, so as to promote and facilitate the transfer of live stock from said various railroads to the said Union Stock Yards, and for the accommodation of such shippers or consignees as desired to have their stock delivered at said Union Stock Yards; that at such times and until the change hereinafter stated the said Union Stock Yards & Transit Company, desirous of promoting its business and to encourage shipments of live stock to said Union Stock Yards, permitted various railroads to use its said tracks by running over the same their engines and cars free of charge; that the tracks of the Atchison, Topeka & Santa Fe Railroad Company were connected by a switch with the tracks of the Union Stock Yards & Transit Company, so as to permit cars to be transferred from its said station at Corwith in Chicago to the said Union Stock Yards; that under the license or permission so granted cars of live stock were transported by said railroad company from its station at Corwith over said tracks, and that such service was at said times performed by said railroad company for shippers gratuitously; that on or about the first day of June, 1894, the said Union Stock Yards & Transit Company revoked the license and permission which it had theretofore given to said railroad companies and the receivers of the Atchison, Topeka
158 & Santa Fe Railroad Company of using its tracks, and thereupon imposed upon such common carriers using said tracks of the Union Stock Yards & Transit Company a toll varying from 80 cents to $1.50 per car for each car transported or hauled over its said tracks to the Union Stock Yards; that said receivers could not use said tracks without paying such toll, inasmuch as the said Union Stock Yards & Transit Company had a legal right to impose the same; that the cost of transferring cattle and other freight from its station at Corwith over switch connections and tracks of the Union Stock Yards & Transit Company to the Union Stock Yards increased from time to time as shipments to such stock yards increased and the transfer of carloads to such stock yards became complicated and burdensome; that it required the services of an extra switch engine and extra crew to transfer cars from said station at Corwith to the Union Stock Yards, a distance of about six miles, and required the services of a various number of employes to handle and

expedite such transfers; that thereupon said receivers found it advisable and necessary to charge for the service of making such transfer, which had theretofore been rendered gratuitously, and thereupon made and published as required by law a charge of $2 per car on all cars of every kind so transferred to said Union Stock Yards, and thereupon so amended their existing tariffs and schedules as to show such charge of $2 per car for switching or transferring such car from their line of railroad to the Union Stock Yards; that such charge of $2 per car was at the time the same was imposed and still is just and reasonably low for the services performed; that such charge is what is usually designated and known as a terminal or switching charge, and such charge was and is imposed to compensate the carrier for transporting and transferring carloads from its main line, over the tracks of the Union Stock Yards & Transit Company to the Union Stock Yards, where such shippers desire a delivery to be made.

They say that some live stock has been heretofore and may in the future be shipped to Chicago by parties who do not desire same to go to the market, and therefore do not desire delivery to be made at the Union Stock Yards, but desire delivery to be made at some point upon the line of railroad of the Atchison, Topeka & Santa Fe Railroad Company, either at Corwith or at some other point upon its tracks, and that rates have been established for such shipments to Chicago, and the Atchinson, Topeka & Santa Fe Railway Company has carefully designated in its tariffs where its station in Chicago is for such shipments, to wit, at Corwith, and the rates thereto, and also the charge which would be imposed or made for transferring stock from its line of railroad over the railroad of the Union Stock Yards & Transit Company to said Union Stock
159 Yards, so that no one could be misled by said tariffs; that such charges have been duly made, filed, and published as required by the interstate-commerce law.

They further say that shortly after the making of the said switching or terminal charge for transferring cars to the Union Stock Yards by said receivers of the Atchison, Topeka & Santa Fe Railroad Company, Wilson T. Keenan, and a large number of live-stock commission men having their place of business at the Union Stock Yards, sought to have the court wherein said receivers had been appointed declare such charge illegal and unauthorized, but such charges have been sustained and held to be legal by the circuit court of appeals for the seventh circuit.

The said The Atchinson, Topeka & Santa Fe Railway Company says that the terminals of its line in Chicago for delivery of live stock is at Corwith, and for delivery of freight generally at its station at 12th street.

They deny that the established aggregate rates and charges for the transportation of live stock from shipping points in Texas and other Southwestern States to Chicago, including the terminal or switching charge of $2 per car, are unjust or unreasonable in themselves, or relatively, as compared with rates and charges on live stock over their various lines from various points of shipments to destinations other than Chicago.

They deny that said rates to the extent mentioned unjustly discriminate against complainant, its members, or other owners or shippers of live stock or consignees thereof at Chicago, or subject them or their traffic to undue or unreasonable prejudice or disadvantage, in favor of or to the

undue or unreasonable preference or advantage of shippers of live stock or their traffic to live-stock markets or destinations other than Chicago or in favor of consignees at such other markets or destinations.

They deny that their said rates are unjustly discriminating in favor of or to the undue or unreasonable preference of themselves as alleged in the complaint.

They say that the said charge of $2 per car is a charge which should be stated separately in tariffs as changing, affecting, or determining any part or the aggregate of the rates or charges for transportation, and was so held by the circuit court of appeals for the seventh circuit.

They deny that what they have done is in violation of sections 1, 2, 3, and 6, or of any of said sections, of said act to regulate commerce.

They deny that in exacting said charge of $2 per car they violate sections 1, 2, or 3, or either of them, of the act to regulate com-
160 merce, as alleged in the 5th paragraph, and deny the allegations in the 5th paragraph of the complaint.

They deny all other allegations in the said complaint not herein specifically admitted or denied.

Wherefore they pray that the complaint may be dismissed.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY AND THE GULF, COLORADO & SANTA FE RAILWAY COMPANY,

By E. D. KENNA,
ROBERT DUNLAP,
Their Attorneys.

STATE OF ILLINOIS, *County of Cook, ss:*

W. B. Biddle, of lawful age, being by me first duly sworn, on oath deposes and says that he is the freight traffic manager of the Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Company; that he has read the foregoing answer, and that the facts stated therein are true, as he verily believes.

(Sgd.) W. B. BIDDLE.

Sworn to before me and subscribed in my presence this 19th day of September, 1896.

ELDON J. CASSODAY,
Notary Public.

EXHIBIT B.

Before the Interstate Commerce Commission.

THE CATTLE RAISERS' ASSOCIATION OF TEXAS, complainant,
versus
THE FORTWORTH & DENVER CITY RAILWAY Company and others, defendants.

Answer of the Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company to the intervening petition of the Chicago Live Stock Exchange in said cause.

The Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company, two of the above-
161 named defendants, for answer to the intervening petition filed by

the Chicago Live Stock Exchange in the above cause, say that the Gulf, Colorado & Santa Fe Railway Company is a corporation organized under the laws of the State of Texas, and operates a line of railroad from Galveston, Texas, to Purcell, in the Indian Territory, with several branches to said main line in the State of Texas; but said Gulf, Colorado & Santa Fe Railway Company does not participate in or receive any portion of the $2 charge for switching or transferring cars to the Union Stock Yards in Chicago complained of.

That the Atchison, Topeka & Santa Fe Railway Company is a corporation existing under the laws of the State of Kansas, and operates a line of railroad from a connection with the Gulf, Colorado & Santa Fe Railway Company at Purcell, in the Indian Territory, by way of Kansas City and Atchison to Chicago, Illinois, and also a line extending from Albuquerque and connecting with its aforesaid line at Newton, in the State of Kansas.

Said defendants say that they are not advised of the character or the business of said Chicago Live Stock Exchange or the exact nature of such association, and do not admit the same.

They deny that they established the said terminal or switching charge of $2 per car arbitrarily, but say that the same was established as hereinafter stated; and they deny that such charge was or is contrary to the interstate-commerce act.

They deny that the reasonableness or unreasonableness of said charge, in addition to the rate, can be determined by the absence of such charge at other points, because the conditions are not substantially similar. On the contrary, they aver that the conditions and circumstances at other points named in the intervening petition are substantially dissimilar.

They deny that said terminal or switching charge constitutes an unjust discrimination against Chicago or an undue or unreasonable preference against persons or localities.

They deny that the yards, pens, and chutes of the Union Stock Yards & Transit Company and railway approaches thereto in the city of Chicago have been or are used by these defendants as a common union depot or station for the reception and delivery and shipment and forwarding of live stock; but, on the contrary, they aver that the members of said Chicago Live Stock Exchange have their places of business at said Union Stock Yards and make and designate said stock yards as their stock yards and the place where they wish particular deliveries of cattle consigned them to be made.

162 These defendants say that they are advised that the Union Stock Yards & Transit Company is not a common carrier engaged in the transportation of property to Chicago, but is the owner of a railroad and railroad tracks located in the city of Chicago.

They admit that the Union Stock Yards & Transit Company owns and for many years has owned stock yards, pens, and chutes, and railway tracks approaching thereto, in the city of Chicago.

They aver that the members of the said Chicago Live Stock Exchange, or many of them, are desirous and have been desirous of using the many facilities furnished at said Union Stock Yards, including, as it does, a place for the marketing of their cattle, and that the shipments made to or by the members of complainants' association are shipments of cattle

intended for sale and are such as are intended for delivery at the Union Stock Yards, and said members have not requested delivery upon the line of these defendants' railroad in the city of Chicago.

They deny that they have not been subjected to increased charges or expenses in handling or transportation of cattle at Chicago, especially those intended for transfer and delivery at the Union Stock Yards.

They aver that between December, 1893, and January, 1896, the line of railroad now operated by the Atchison, Topeka & Santa Fe Railway Company, was, during such period, operated by receivers duly appointed to operate the railroad of the Atchison, Topeka & Santa Fe Railway Company, and that since January 1st, 1896, the Atchison, Topeka & Santa Fe Railway Company, having become the purchaser under foreclosure proceedings of the railroad of the Atchison, Topeka & Santa Fe Railroad Company, has operated the same, and that the line of railroad of the Atchison, Topeka & Santa Fe Railroad Company, when first extended and built to the city of Chicago, was built through its station at Corwith, in said city, with its main freight depot at 12th street, and at no time was its line built or extended to the Union Stock Yards in said city of Chicago.

That at the time of the construction and extension of such railroad to Chicago the Union Stock Yards had been established by the Union Stock Yards & Transit Company, a corporation duly authorized in its charter to construct such stock yards, hotels, and other facilities and accommodations, including the Live Stock Exhange, for the accommodation of live stock commission men, including the members of intervening petitioner engaged in the buying and selling of live stock in said city, and also to construct railway tracks so as to connect with the tracks of various railroads running into the city of Chicago, so as to permit
163 and facilitate the transfer of live stock from said various railroads to said Union Stock Yards, for the accommodation of such shippers or consignees as desired to have their stock delivered at said Union Stock Yards.

That at such time, and until the change hereinafter stated, the said Union Stock Yards & Transit Company, desirous of promoting its business, and to encourage shipments of live stock to said Union Stock Yards, permitted various railroads, including these defendants, to use its said tracks by running over the same their engines and cars free of charge; that the tracks of the Atchison, Topeka & Santa Fe Railroad Company were connected with the tracks of the Union Stock Yards & Transit Company by a switch, so as to permit cars to be transferred from its said station at Corwith in Chicago to said Union Stock Yards; that under the license or permission so granted cars of live stock were transported by said railroad company from its station at Corwith over said tracks, and that such service was at said times performed by said railroad company gratuitously.

That on or about the first day of June, 1894, the said Union Stock Yards & Transit Company revoked the license and permission which it had theretofore given to said railroad companies and the receivers of the Atchison, Topeka & Santa Fe Railroad Company, for using its tracks, and thereupon imposed upon such common carriers using said tracks of the Union Stock Yards & Transit Company a toll varying from 80 cents to one dollar and fifty cents per car for each car transported or hauled over its said tracks to the Union Stock Yards; that said receivers could

not use said tracks without paying such toll, inasmuch as the said Union Stock Yards & Transit Company had a legal right to impose the same. That the cost of transferring cattle and other freight from its station at Corwith, over switch connections and tracks of the Union Stock Yards & Transit Company to the Union Stock Yards, increased from time to time, as shipments to such stock yards increased and the transfer of car loads to such Union Stock Yards became complicated and burdensome; that it required the services of an extra switch engine and extra crew to transfer cars from the said station at Corwith to the said Union Stock Yards, a distance of about six miles, and required the services of a various number of employes to handle and expedite such transfers;

That thereupon said receivers found it necessary and advisable to charge for the service of making such transfer, which had theretofore been rendered gratuitously, and thereupon made and published as required by law a charge of $2 per car on all cars of every kind so transferred to said Union Stock Yards, and thereupon so amended their existing tariffs and schedules as to show such charge of $2 per car for switching or transferring such car from their line of railroad to the Union Stock Yards; that such charge of $2 per car was, at the time it was made, and still is, just and reasonably low for the services performed; that such charge is what is usually designated and known as a terminal or switching charge, and such charge was and is imposed to compensate the carrier for transporting and transferring car loads from its main line over the tracks of the Union Stock Yards & Transit Company to the Union Stock Yards, where such shippers desire a delivery to be made.

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They say that some live stock has been heretofore and may in the future be shipped to Chicago by parties who do not desire the same to go to the said Union Stock Yards, and therefore do not desire delivery to be made at said Union Stock Yards, but desire delivery to be made at some point upon the line of railroad of the Atchison, Topeka & Santa Fe Railway Company, either at Corwith or at some other point upon its tracks, and that rates have been established for such shipments to Chicago, and the Atchison, Topeka & Santa Fe Railway Company has designated in its tariffs where its station in Chicago is for such shipments, to wit, at Corwith, and the rates thereto, and also the charge which would be imposed or made for transferring stock from its line of railroad over the railroad of the Union Stock Yards & Transit Company to said Union Stock Yards, so that no one could be misled by said tariffs; that such tariffs have been duly made, filed, and published as required by the interstate-commerce law.

They further say that shortly after the making of said switching or terminal charge for transferring cars to the Union Stock Yards by said receivers of said Atchison, Topeka & Santa Fe Railroad Company, Wilson T. Keenan, and a large number of live stock commission men, members of the said Chicago Live Stock Exchange, and virtually representing the same, and having their places of business at the Union Stock Yards, sought to have the court wherein said receivers had been appointed declare such charge illegal and unauthorized, but such charges have been sustained and held to be legal by the circuit court of appeals for the seventh circuit.

The said the Atchison, Topeka & Santa Fe Railway Company says

that the terminals of its line in Chicago for delivery of live stock is at Corwith, and for delivery of freight generally at its station at Twelfth street.

They say that the said charge of $2 per car is a charge which should be stated separately in tariffs as changing, affecting, or determining
165 any part or the aggregate of the rates or charges for transportation, and was so held by the circuit court of appeals for the seventh circuit.

They deny all other allegations in said intervening petition not herein specifically admitted or denied.

Wherefore they pray that the intervening petition may be dismissed.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, AND THE GULF, COLORADO & SANTA FE RAILWAY COMPANY.

By (Sgd) E. D. KENNA,
(Sgd) ROBERT DUNLAP,
Their Attorneys.

STATE OF ILLINOIS, *County of Cook, ss:*

W. B. Biddle, of lawful age, being by me first duly sworn, on oath deposes and says that he is the freight traffic manager of the Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company; that he has read the foregoing answer, and that the facts stated therein are true, as he verily believes.

(Sgd) W. B. BIDDLE.

Sworn to before me and subscribed in my presence, this 22nd day of March, 1897.

(Sgd) A. E. BLYTH,
Notary Public.

(Endorsed:) Filed June 8, 1889. S. W. Burnham, clerk.

166 In the circuit court of the United States, northern district of Illinois, northern division.

THE INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO, BURLINGTON AND QUINCY RAILROAD Company et al. } In equity, 25101.

The separate answer of the Wabash Railroad Company, one of the defendants to the bill of complaint of the above-named complaint.

The respondent now and at all times hereafter, saving to itself all and all manner of benefit or advantage of exception or otherwise, that could or might be had or taken to the said bill and to the many errors, uncertainties, and imperfections thereof, for answer thereunto, or to so much thereof or such parts thereof as this respondent is advised is material or necessary for it to make answer unto, answering, says:

Respondent admits that it is a corporation and that it is a common carrier engaged in the transportation of persons and property, and it admits that on the first day of September, 1896, it was impleaded in a contro-

versy before the Interstate Commerce Commission upon the petition of the Cattle Raisers' Association of Texas, and that a copy of said petition marked "Exhibit A," attached to the bill of complaint herein, is a correct copy of said petition.

Respondent admits that it filed its answer to said petition, as stated and charged in complainant's bill of complaint.

Respondent admits that on the 10th day of March, 1897, the Chicago Live Stock Exchange filed its intervening petition in said cause, alleging in substance the matters set forth in complainant's bill, and that this respondent filed its answer to said intervening petition, as alleged in complainant's said bill.

Respondent admits that the matters in controversy came on for hearing before said Commission, and that said Commission heard evidence and made a report in writing therein, including the findings of fact and conclusions of said Commission, but respondent denies that said Commission found that the terminal charge at Chicago of two dollars for carload of live stock was unreasonable, and respondent avers the fact to be that many of the findings of fact by said Commission were wholly unsupported by the evidence and contrary to the evidence before said Commission.

167 Respondent admits that said Commission formulated its order and the notice set forth in "Exhibit D," and that the same was served upon this respondent, but respondent avers the fact to be that said order was and is unauthorized, unreasonable, and wholly unsupported by the evidence before said Commission, or by the findings of fact by said Commission, and that its enforcement would be unjust and unequitable.

Respondent admits the filing of a petition for a rehearing in said cause and the action of said Commission therein as stated and charged in complainant's said bill, but it avers the fact to be that the conclusions and findings of said Commission therein were unwarranted by the facts found or by the evidence before said Commission.

Respondent admits that said Commission, upon the determining of said petition for rehearing, formulated another order and notice as stated and charged in said bill, but respondent says that said additional order is unlawful and unauthorized beyond the power of said Commission, and is and was wholly unsupported by the evidence and inconsistent with and contrary to the material facts found by said Commission.

This respondent denies that it at any time owned any stock in the Union Stock Yards and Transit Company, or was in any manner interested in the promotion of said company, or in the promotion of the Union Stock Yards at Chicago.

Respondent admits that on and after the first day of June, 1894, the Union Stock Yards and Transit Company imposed a toll or charge on the various railroad companies using the tracks of said Union Stock Yards and Transit Company and reaching said Union Stock Yards from the terminus of the lines of the various railroads in Chicago, but respondent avers that prior to said date the use of such tracks was given to the various railroads free of charge; that the rate for the transportation of live stock to Chicago had continually decreased, and that the same was not reasonable compensation for the service performed at such time; that theretofore the service of transporting live stock from the terminus of the various

railroads, including the railroad of respondent, to the Union Stock Yards had been performed gratuitously, and that when said toll was imposed by the Union Stock Yards and Transit Company for the use of said tracks, the respondent deemed that it could not perform the service of transporting the live stock from the end of its line to the Union Stock Yards gratuitously, and determined then and there to make a reasonable charge for the same. Thereupon the respondent amended and changed its tariff charges so as to show a charge for the transportation of live stock
168 from the terminus of its line in Chicago to the Union Stock Yards, and to charge thereafter for switching cars the sum of $2.00 per car from the terminus of respondent's line in Chicago to the Union Stock Yards.

Respondent says that said sum of $2.00 is in all respects reasonably low for the services performed, and that the through rate to Chicago, with the addition of said $2.00 per car, is as reasonably low as shippers could ask or demand, and is a reasonable price for the services performed.

Respondent admits that stock transported to Chicago, intended to be sold upon the market, must go to the Union Stock Yards, but it avers the fact to be that through stock, destined for Chicago merely and not intended for sale, might as well be delivered at the terminus of respondent's line in Chicago.

Respondent denies that there is any undue preference given by it to any other live-stock market against the city of Chicago, or that it is subject to any undue injustice or prejudice as against any other live-stock market.

Respondent says that the Cattle Raisers' Association of Texas is not in any manner discriminated against, or in any manner injured or damaged in the matter of said switching charge in the city of Chicago complained of, and that said association was treated as well and in the same manner as other shippers in said city of Chicago, and that the complaint of the Cattle Raisers' Association of Texas is wholly without merit or justification.

Respondent denies that said switching or terminal charge, as aforesaid, of $2.00 per car, is unjust, unreasonable, or unlawful in any respect, and it denies that the service for which such charge was or has been made since the first day of June, 1894, is included in the rate for the transportation of live stock in Chicago.

Respondent denies that the terminal charge, or charge for switching of $2.00 per car or any part thereof, is made for the service which is paid for in the rate to Chicago, and that the suggestion of the Commission in its report to that effect is without foundation of fact or in law, and is contrary to the evidence introduced before the Commission, and contrary to the tariff rates.

Respondent denies that it consented that the Commission might make a rate based upon services performed, or that it stated on the rehearing that it did not ask for a modification of the order so as to enable it to retain the amount actually paid for the services rendered.

Respondent denies that any undue prejudice was created against the market at Chicago in the imposition of such switching or terminal charge, and that such charge is without justification, but, on the contrary, it avers the fact to be that the same is lawful.

169 Respondent further says that the charges and tariffs herein complained of have been sustained and held to be lawful by the circuit court of appeals of the 7th circuit, wherein the material facts and matters and things in controversy herein are set forth and determined by said court.

And this respondent denies all other matters and things in said bill of complaint set forth, and denies all and all manner of unlawful combination and confederacy charged in said bill. Without this, if there is any other matter, thing, or act in said bill contained material or necessary for this respondent to make answer to, not herein and hereby well and completely answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of this respondent.

All of which matters and things this respondent is willing and ready to aver, maintain, and prove, as this honorable court may direct, and humbly prays to be hence dismissed with its reasonable cost and charges in this behalf most wrongfully sustained.

THE WABASH RAILROAD COMPANY,
By GEO. B. BENNETT, *Its Solicitor.*

(Endorsed:) Filed June 8, 1899. S. W. Burnham, clerk.

UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

In the circuit court of the United States in and for the northern district of Illinois.

THE INTERSTATE COMMERCE COMMISSION, petitioner,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY et al., defendants. } 25101.

The separate answer of the Illinois Central Railroad Company, one of the defendants in the above-entitled proceeding, to the petition of the Interstate Commerce Commission therein.

This defendant, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception or other objection that can or may be had or taken to the many errors, uncertainties, and
170 other imperfections in the said petition contained, for answer thereunto or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says:

1. It admits the allegations of the paragraphs of the petition numbered 1, 2, and 3.

2. This defendant admits that it filed with the Interstate Commerce Commission an answer by it to said petition of the Cattle Raisers' Association of Texas, a copy of which answer, marked "Exhibit 1," is hereto attached and made a part hereof; and that it also filed with said Commission an answer by it to said intervening petition of the Chicago Live Stock Exchange, a copy of which answer, marked "Exhibit 2," is hereto attached and made a part hereof.

This defendant further admits that the said proceedings before the Interstate Commerce Commission came on for investigation and hearing

as in said petition herein averred, and that afterwards the said Commission made a report in writing in respect thereof which included certain findings of fact; but this defendant denies that the effect of said report and findings of fact is as set forth in paragraph 4 of the petition herein, and this defendant, on the contrary, avers that said report and findings of fact were such only as appear from the original thereof now on file in the office of said Interstate Commerce Commission; but this defendant admits that said report and findings of fact are correctly set forth in the copy thereof marked "Exhibit C," attached to the petition herein.

This defendant further admits that the said Commission formulated an order and notice which are correctly set forth in the copy thereof marked "Exhibit D," attached to the petition herein; but this defendant avers that said order and notice have only such force and effect as are given to the same by law, and this defendant denies that said order was or is a lawful order or requirement. This defendant admits that copies of the said report and findings of fact and of the said order and notice of the said Commission were duly delivered to this defendant.

This defendant further admits that it petitioned the said Commission for a reargument of said matter, but avers that the scope and purpose of its said petition for a reargument were such only as appear on the face thereof and are shown by the copy of said petition for reargument marked "Exhibit 3" and attached hereto as a part hereof. This defendant admits that arguments were had on said petition for reargument and that thereupon said Commission modified its report and findings of fact, which said modifications this defendant admits are correctly set forth in "Exhibit E" to the petition herein. This defendant further admits that the Com-
171 mission thereupon formulated a further order and notice, a copy of which is correctly set forth in "Exhibit F," attached to the petition herein, and that copies thereof were delivered to this defendant; but this defendant denies that said order or notice was or is a lawful order or requirement. This defendant admits that it has refused to obey said orders of said Commission and each of them.

3. This defendant denies that said charge of two dollars per car made by it upon carloads of live stock delivered at the Union Stock Yards in Chicago has been or is unreasonable, unjust, or unlawful; or that said charge has been or is excessive in amount; or that said charge or the aggregate charges of defendant for transportation of live stock from any place to the Union Stock Yards at Chicago have been or are to any extent unjust or unreasonable in themselves, or relatively to transportation charges on live stock to destinations other than Chicago; or that said two-dollar charge or the aggregate charges of defendant for the transportation of live stock from any place to the Union Stock Yards at Chicago have been or are an unjust discrimination against Chicago in comparison with any other destination of live-stock shipments, or against shippers of live stock to Chicago in comparison with shippers of live stock to any other destination, or against receivers of live stock at Chicago in comparison with receivers of live stock at any other destination, or against the live-stock traffic in comparison with any other description of traffic; and this defendant denies that while imposing said two-dollar charge at all, it has omitted to charge it to anyone whomsoever for a like and contemporaneous service; and this defendant alleges that said charge

has been made uniformly and alike upon all shipments of live stock to the Union Stock Yards at Chicago, ever since the charge was first imposed in 1894; and this defendant denies that in imposing said two-dollar charge it has at any time subjected any person, company, firm, corporation, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, or has at any time made or given to any person, company, firm, corporation, locality, or description of traffic any undue or unreasonable preference or advantage; and this defendant denies that by making said two-dollar charge on live stock delivered at the Union Stock Yards at Chicago it has violated or does violate section 1 or section 2 or section 3 or any other section of the interstate commerce act.

4. This defendant alleges that it neither has owned or controlled, nor does own or control, any line of railroad leading to or terminating at the Union Stock Yards of the Union Stock Yards & Transit Com-
172 pany, in the city of Chicago; but that a line of railway track owned by the Union Stock Yards & Transit Company extends from points of connection with the lines of this defendant, one near 43rd street in the city of Chicago, and the other at or near Ash street in said city of Chicago, to said Union Stock Yards, and that the only means of access to said stock yards for live stock coming into the city of Chicago over the railroad line of this defendant have been and are by means of said tracks of the Union Stock Yards & Transit Company from the points of connection with this defendant's lines of road to said stock yards as aforesaid. That on June 1st, 1894, said Union Stock Yards and Transit Company required that for any future use of its said tracks in reaching the stock yards, this defendant company should pay a rental of seventy-five cents per car each way for each car of live stock delivered at said stock yards via Ash steeet junction, and should pay the sum of forty cents per car each way for each car of live stock delivered at said stock yards via 43d street junction; these charges of a dollar and a half, and of eighty cents being in addition to the charge at all times imposed of twenty-five cents per car for unloading live stock at said stock yards; that in addition to paying the aforesaid charges to the Union Stock Yards & Transit Company, it costs, and has, since June 1st, 1894, cost this defendant the further expense of the actual transportation work for each car of live stock delivered at the Union Stock Yards, in hauling the same from the aforesaid junctions of the track of this defendant with the tracks of the Union Stock Yards & Transit Company to said stock yards, and that the total cost to this defendant of such service in hauling live-stock cars to said stock yards, and delivering them thereat has, and at all times since June 1st, 1894, has, been via the seventy-five-cent trackage route, two dollars and twenty-three cents per car, and via the forty-cent route, one dollar and sixty-five cents per car; but, whereas more live stock is carried by defendant over the seventy-five-cent route than over the forty-cent-route, the actual average cost to defendant is one dollar, ninety-nine cents, seven mills ($1.997); that the rates for transportation of live stock to Chicago had for many years before June 1st, 1894, been steadily declining, and had, at that date, become very low, and that since June 1st, 1894, for numerous reasons, including strenuous and diversified competition, a farther decline

has taken place in defendant's rates for the transportation of live stock to Chicago for a great portion of the places of shipment from which live stock is hauled over this defendant's line to Chicago, such decline since June 1st, 1894, in the rates for
173 transportation of live stock to Chicago (wholly apart from said two-dollar charge) amounting to more than two dollars per carload; that the places from which the rates to Chicago elsewhere than at said stock yards, and not including said two-dollar charge, for delivery at the stock yards, have so declined embrace a great part of the territory concerning shipments of which complaint is made in this proceeding; that on June 1st, 1894, when said rental charges were first imposed, as aforesaid, by the Union Stock Yards & Transit Company, this defendant delivered, and the fact was that its live-stock rates to Chicago were already so low as not to be a reasonable and sufficient compensation to defendant for the service performed in transporting live stock to said Union Stock Yards, and that defendant's said live-stock rates were at least two dollars lower than would be reasonable for such transportation to the said Union Stock Yards; that it thereupon made, printed, filed, with the Interstate Commerce Commission and duly published and posted in two public and conspicuous places in every depot, station, or office of this defendant where freight was received for transportation, in such form that it should be accessible to the public and could be conveniently inspected, and has ever since kept on file and duly published and posted a tariff concerning its charges for transportation of live stock to the Union Stock Yards in Chicago or elsewhere in Chicago, wherein and whereby it was and is announced to the public that defendant's charges thereafter for transportation of live stock to the Union Stock Yards at Chicago would be two dollars per carload more than the ordinary live-stock rates to Chicago, and that for such ordinary live-stock rate to Chicago defendant would not transport live stock to said Union Stock Yards and deliver it thereat; that since June 1st, 1894, the ordinary or flat Chicago live-stock rate has not been made for live stock to be transported to and delivered at said stock yards, and it has been distinctly declared by the tariffs of this defendant that said ordinary or flat live-stock rate to Chicago was not imposed for and did not include any service in transporting live stock over the tracks of the Union Stock Yards & Transit Company to said stock yards, or delivering stock at such yards; that said charge of two dollars per car made by defendant since June 1st, 1894, on live stock transported to the Union Stocks Yards has been made and is made only for the service of transporting from the aforesaid junction of this defendant's road with the tracks of the Union Stock Yarks & Transit Company over said latter tracks to said Union Stock Yards and for delivery at said yards, and that no other charge than said two-dollar charge has at any time been made or is made by this defendant for any portion of said service in transporting live
174 stock from the aforesaid junction of this defendant's road with the tracks of the Union Stock Yards & Transit Company to said stock yards and delivery at said yards.

5. This defendant denies that it has or at any time in the last ten years has had any ownership of or interest in the Union Stock Yards & Transit Company or its railroad or other property.

6. This defendant alleges that much the greater part of the shipments of live stock over its road to Chicago, either at said Union Stock Yards or elsewhere in that city, has, since June 1st, 1894, consisted and still does consist of shipments from places not upon the road of this defendant, but upon other connecting lines of railroad, and has been carried and still is carried to Chicago upon a joint rate made by this defendant with a connecting carrier or carriers over whose road or roads the shipment travels, and that such joint rate for such shipments has been and is shared by this defendant with such other connecting carrier or carriers upon agreed percentage, but said two-dollar terminal charge imposed for the transportation of live stock from the aforesaid junction of this defendant's road with the tracks of the Union Stock Yards & Transit Company in Chicago to said Union Stock Yards has been made and is made solely by this defendant, and not jointly with any connecting carrier, and has been at all times and is received solely and wholly by this defendant, being compensation to this defendant for the service aforesaid of transporting over the tracks of the Union Stock Yards & Transit Company to said stock yards and delivery at said stock yards of such live stock, which at all times has been performed and is still performed solely and entirely by this defendant; and this defendant alleges that any reduction of said two-dollar charge must and will fall wholly upon this defendant, while any reduction of the general or flat live-stock rate to Chicago must and would, in the case of all shipments made over the connecting roads of this defendant and a connecting carrier or carriers, fall upon all such connecting carriers and be shared by them in the proportion of their percentages in the joint rate to Chicago.

7. This defendant alleges that heretofore, to wit, some time in the year 1895, the property of the Atchison, Topeka & Santa Fe Railroad Company, being the predecessor of the Atchison, Topeka & Santa Fe Railway Company, one of the defendants herein, was in the hands of receivers of the United States circuit court for the northern district of Illinois, and that in or about said year 1895 the members of said Chicago Live-Stock Exchange which filed intervening petition, as aforesaid, in this proceeding before the Interstate Commerce Commission, did petition said United States circuit court for an order directing its receivers, who were in pos-
175 session and in charge of the operation of the railway of said Atchison, Topeka & Santa Fe Railroad Company, to discontinue the making of said two-dollar terminal charge upon live stock delivered to said Union Stock Yards, and did in their said petition to said circuit court allege all the facts set forth in the petition of the Chicago Live Stock Exchange attach' to the petition herein as "Exhibit B;" that the said Atchison, Topeka & Santa Fe Railroad Company and the receivers thereof answered said petition, and said United States circuit court then and there acquired and had jurisdiction of the parties to said petition and of the subject-matter thereof; that a trial was had upon said petition and answer and the facts proven, which were the same facts that are set forth herein, and such proceedings were had by and before said United States circuit court for the northern district of Illinois and by and before the United States circuit court of appeals for the seventh circuit that said United States circuit court of appeals duly adjudged and decreed that the Atchison, Topeka & Santa Fe Railroad Company and its receivers had a right under the tariffs of said company, which were identical

with the tariffs made by this defendant as aforesaid concerning the imposition of said terminal charge, after June 1st, 1894, and under the facts appearing to said United States circuit court of appeals, which were the same as the facts herein presented, to impose said two-dollar terminal charge, and judgment was duly entered and given in said matter in favor of said Atchison, Topeka & Santa Fe Railroad Company and its receivers; that this defendant hereby refers for greater certainty to all the records and proceedings in the matter of said petition of the members of the Chicago Live Stock Exchange to said United States circuit court for the northern district of Illinois, both in said United States circuit court for the northern district of Illinois and in said United States circuit court of appeals for the seventh circuit, and asks leave to make such records and proceedings a part hereof and to have them so considered; and that said judgment of the United States circuit court of appeals in said matter and in an adjudication that this defendant has a right to impose the said two-dollar terminal charge in addition to its ordinary charge for hauling live stock to the city of Chicago for delivery elsewhere than at said Union Stock Yards.

8. This defendant repeats here, as if now specifically stated, each and all of its allegations and denials contained in its original petition or complaint before the Interstate Commerce Commission in this proceeding, of which answer a copy, marked "Exhibit 1," is attached, as already hereinbefore stated, and is made a part hereof.

9. This defendant prays the same benefits as if it had demurred
176 to the said petition herein; and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

ILLINOIS CENTRAL RAILROAD COMPANY,
[SEAL.] By J. T. HARAHAN,
Its Second Vice-President.

Attest:
W. G. BRUER,
Assistant Secretary of Illinois Central Railroad Company.
SIDNEY F. ANDREWS,
Assistant General Solicitor of said Defendant Illinois Central Railroad Company and its Solicitor.

EXHIBIT 1.

Before the Interstate Commerce Commission.

THE CATTLE RAISERS' ASSOCIATION OF TEXAS
vs.
THE FORT WORTH & DENVER CITY RAILWAY Company et al.

The Illinois Central Railroad Company, one of the defendants in this case, respectfully makes answer as follows:

1. This respondent is not advised of the character or busines' of the complainant association other than as stated in its petition, and does not admit the same.

It admits that it is a common carrier engaged in railroad transportation of property, and, in connection with other carriers, has received and transported property from the State of Texas and elsewhere to Chicago, in the State of Illinois.

3. It admits that the Union Stock Yards & Transit Company owns yards, pens, and chutes, and railway tracks approaching thereto in the city of Chicago, and that respondent has generally used these railway approaches to said yards for the delivery of live stock to the Union Stock Yards, but denies that the same has been used as a union depot or station for it in the city of Chicago for the reception and delivery of live stock.

It denies that it has constantly held out to shippers or other common carriers that its live-stock depot or station at Chicago was or is the Union Stock Yards in Chicago.

It denies that live stock shipped to Chicago without other billing
177 directions is certain to be delivered at the Union Stock Yards, unless the same be consigned to some live-stock commission man, whose place of business is located at said stock yards.

It denies that it has any knowledge that the Union Stock Yards & Transit Company absorbed or consolidated with other existing stock-yard corporations or firms at Chicago, or that it encouraged or promoted said arrangement for a common or union live-stock depot that it might be relieved of the expense and inconvenience of maintaining separate live-stock depots in that city.

It admits that on June 1st, 1894, it advanced its rates for the transportation of live stock to the Union Stock Yards at $2.00 per car, but avers that this was a reasonable charge for the service performed in transporting the cars to the Union Stock Yards over the Union Stock Yards & Transit Company's railroad from the junction point of its line at Chicago with that of the Union Stock Yards & Transit Company.

It denies that it entered into any agreement with the Union Stock Yards & Transit Company by which it voluntarily agreed to pay a toll upon each car for the use of the tracks of the Union Stock Yards & Transit Company; and denies that the toll per car charged this respondent for trackage by the Union Stock Yards & Transit Company was agreed to for the purpose of exacting an additional charge of $2.00 per car.

It denies that this toll of $2.00 per car charged by this respondent is based upon no increased expense to it. This respondent has the necessary facilities at its terminal station at Chicago to unload and properly take care of all live stock shipped or waybilled to such station.

It denies that the aggregate rates and charges for the transportation of live stock received from other carriers from Texas or other points, including this terminal charge of $2.00 per car, are to the extent of said $2.00 unreasonable or unjust in themselves or relatively so; and denies that it is an unjust discrimination against the complainant, its members, or other owners and shippers of live stock and consignees thereof at Chicago, or that it subjects them and their traffic to an undue and unreasonable prejudice and disadvantage in favor of shippers of live stock to other markets than Chicago.

It further denies that this charge of $2.00 per car was established without any increase in cost of service to this respondent.

It contends that said charge of $2.00 per car is a "terminal charge,"

which, by the provisions of the act to regulate commerce, can
178 be separately stated in tariffs as changing or affecting any part of the through transportation rate, but denies that this is in violation of sections 1, 2, 3, and 6 of said act.

5. It denies that said charge of $2.00 per car is largely in excess of terminal charges established and collected by it on packing-house product and other dead freight consigned to Chicago.

Wherefore this respondent prays that the complaint against it in this proceeding be dismissed.

EXHIBIT 2.

Before the Interstate Commerce Commission.

THE CATTLE RAISERS' ASSOCIATION OF TEXAS
vs.
THE FORT WORTH & DENVER CITY RAILROAD Company et al.

In the matter of intervening petition of the Chicago Live Stock Exchange in the above case.

The Illinois Central Railroad Company, one of the defendants in the above-entitled case, answering the allegations material to it, respectfully states:

1. That it is not advised of the character or membership of the complainant association other than as set forth in the petition of complaint. It admits that it is a common carrier engaged in the transportation of property, and that in connection with other common carriers transports property from points in States west and southwest of Chicago.

2. It admits that on June first, 1894, it advanced its rates for the transportation of live stock to the Union Stock Yards at Chicago two dollars per car, but avers that this was a reasonable charge for the service performed in transporting the cars to the Union Stock Yards over the Union Stock Yards & Transit Company's railroad from the junction point of its line at Chicago with that of the Union Stock Yards & Transit Company. Prior to June 1st, 1894, the Union Stock Yards had been established by the Union Stock Yards & Transit Company, a corporation duly authorized under its charter to construct such stock yards, hotels, and other facilities and accommodations, and also to construct railroad tracks so as to connect with the tracks of the various railroads running into the city
of Chicago, in order that such tracks might be used for the accom-
179 modation of such shippers and consignees who desired to have their stock delivered at said Union Stock Yards; that prior to June 1st, 1894, the said Union Stock Yards & Transit Company, desiring to promote its business and to encourage shipments of stock to said Union Stock Yards, permitted the railroad companies to use its said tracks free of charge; that there was established at said stock yards a live-stock exchange, where a number of commission men, engaged in the purchase and sale of cattle, established their offices; that the tracks of the Illinois Central Railroad Company were connected with the tracks of the said Union Stock Yards & Transit Company, and that cars of live stock were transferred by said defendant from its tracks over the said tracks of the Union Stock Yards & Transit Company with its license

and permission; that at such time the rates were sufficiently high to remunerate the said railroad company in the transportation of live stock to Chicago, and to transport it and make deliveries at any point upon its own line or at the Union Stock Yards at the same rate, making at such time no charge for transferring such stock from its station to the Union Stock Yards; but this defendant says that rates began to decline, so that upon the first day of June, 1894, the rates then in force became so low as to be barely sufficient to cover the actual cost of transportation, and wholly insufficient to warrant this defendant in gratuitously performing the additional service of transferring, switching, and hauling such cars of live stock from the line of its railroad to said Union Stock Yards; that on about the first day of June, 1894, the said Union Stock Yards and Transit Company imposed upon this defendant and upon other railroad companies theretofore using its tracks a charge or toll varying from eighty cents to one dollar and fifty cents per car so transported over its tracks to said Union Stock Yards; that thereafter this defendant could not use said tracks without paying such toll; that the cost of transferring cattle from defendant's station on its own line over switch connections and the tracks of the Union Stock Yards & Transit Company to the Union Stock Yards increased as the shipment of such cattle to said Stock Yards by various companies using such tracks increased; that it required the services of an extra switch engine and extra crew to transfer such cars from defendant's station to said Union Stock Yards, a distance of about six miles; that it required the services of a number of other agents to facilitate and make such transfers, and hence this defendant was obliged to make a charge of two dollars per car on all cars of every kind so transferred to said Union Stock Yards, and it avers that such charge of two dollars is, and was at the time the same was imposed, just and reasonable for the services performed, and avers that such charge is and was
180 imposed to compensate this defendant for transporting and transferring carloads from its line of railroad to the tracks of the Union Stock Yards & Transit Company to the Union Stock Yards where shippers desire the delivery to be made; that such shippers desiring such transfer or delivery to be made at such Union Stock Yards made such stock yards their own for the purposes of delivery.

And this defendant avers that it has all the necessary facilities at its terminal station at Chicago to unload and properly take care of all live stock shipped or waybilled to such station. And it further avers that it has designated in its tariff sheets the rates to Chicago, and also the charge which would be imposed or made for transferring stock from its line of railroad over the railroad of the Union Stock Yards and Transit Company to said Union Stock Yards, that such charges have been duly made, filed, and published as required by the interstate-commerce law.

It denies that in exacting said charge of two dollars per car it violated sections 2 and 3 of the act to regulate commerce, as alleged in the second paragraph of the complainant's petition, or that it constitutes an unjust discrimination and an undue and unreasonable preference against said complainants.

Wherefore this defendant prays that the proceeding against it in this case be dismissed.

THE ILLINOIS CENTRAL RAILROAD COMPANY,
By , *Assistant Traffic Manager.*

STATE OF ILLINOIS, *County of Cook, ss:*

being by me first duly sworn, on oath deposes and says that he is the assistant traffic manager of the Illinois Central Railroad Company, and that he has read the foregoing answer and that the facts stated therein are true, as he verily believes.

Subscribed and sworn to before me this day of March, A. D. 1897.

Notary Public.

181 EXHIBIT 3.

Before the Interstate Commerce Commission.

CATTLE RAISERS' ASSOCIATION OF TEXAS
versus
FORT WORTH & DENVER CITY RAILWAY COMPANY et al.

Now comes the Illinois Central Railroad Company, one of the respondents herein, and makes application for a rehearing in the above-entitled cause, for the reasons following, to wit:

1. The order of the Commission herein made is based on the finding that the exaction of a two-dollar terminal charge made by this respondent is unreasonable in amount; whereas on the hearing of this cause it was conceded by the complainant and intervenor that the said sum of two dollars was a reasonable charge for the services rendered, provided any charge whatever could legally be made for said services; and the respondent, relying upon said admission, made as aforesaid by the complainant and the intervenor, did not consider that such question of fact as to the reasonableness of the said charge of two dollars was before this honorable Commission, and this respondent, so believing, did not submit an argument on said question to the said Commission. And the respondent respectfully states that in view of the premises aforesaid the said finding and order of the Commission that this respondent may not lawfully charge more than one dollar for the said terminal services has been made without due and proper hearing.

2. The finding of fact or the conclusion of law that the exaction of a terminal charge of more than one dollar per car is in violation of the first and possibly of the third section of the act and that the defendants ought not to exact more than this sum is errroneous.

3. The conclusion of law and order of the Commission directing the carriers, respondents herein, to cease and desist from charging and collecting the present charge of two dollars is erroneous.

Wherefore, this respondent prays that a rehearing be granted it in the above-ent'led cause, etc.

ILLINOIS CENTRAL RAILROAD COMPANY,
By , *Assistant General Solicitor.*

182 STATE OF ILLINOIS, *County of Cook, ss:*

Sidney F. Andrews, of said county and State, being duly sworn, on oath says that he is the assistant general solicitor of the Illinois Cen-

tral Railroad Company, one of the respondents in this proceeding, and that the matters set forth in the foregoing petition are true, as he verily believes.

Subscribed and sworn to before me this day of , A. D. 1898.

Notary Public.

(Endorsed:) Filed June 8, 1899. S. W. Burnham, clerk.

And on, to wit, the 20th day of June, 1899, there was filed in the office of the clerk of said court, the replications of complainant, in the following words and figures, to wit:

REPLICATION TO ANSWER.

In the circuit court of the United States, northern district of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON & QUINCY R. R. Co. et al. } In chancery. 25101.

The replication of the Interstate Commerce Commission, complainant, to the answer of The Chicago, Burlington & Quincy Railroad Company.

This repliant, saving and reserving now and at all times hereafter, all and all manner of advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant for replication thereunto, say that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law, to be answered unto; and that the said answer of the
183 said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed, or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly pray, as in and by its said bill it has already prayed.

S. H. BETHEA,
Solicitor for Complainant.

(Endorsed:) Filed June 20, 1899. S. W. Burnham, clerk.

REPLICATION TO ANSWER.

In the circuit court of the United States, northern district of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON & QUINCY R. R. Co. et al. } In chancery. 25101.

The replication of the Interstate Commerce Commission, complainant, to the answer of the Chicago Great Western Railway Company.

This repliant, saving and reserving now and at all times hereafter, all and all manner of advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant for replication thereunto, say: That it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law, to be answered unto; that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed, or denied, is true. All which matters and things this repliant is and
184 will be ready to aver and prove, as this honorable court shall direct, and humbly pray, as in and by its said bill it has already prayed.

S. H. BETHEA,
Solicitor for Complainant.

(Endorsed:) Filed June 20, 1899. W. S. Burnham, clerk.

REPLICATION TO ANSWER.

In the circuit court of the United States, northern district of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON & QUINCY R. R. Co. et al. } In chancery. 25101.

The replication of the Interstate Commerce Commission, complainant, to the answer of the Chicago & Northwestern Railway Company.

This repliant, saving and reserving now and at all times hereafter, all and all manner of advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant for replication thereunto, say that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed, or

denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly pray, as in and by its said bill it has already prayed.

S. H. BETHEA,
Solicitor for Complainant.

(Endorsed:) Filed June 20, 1899. S. W. Burnham, clerk.

185 REPLICATION TO ANSWER.

In the circuit court of the United States, northern district of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON & QUINCY R. R. Co. et al. } In chancery. 25101.

The replication of the Interstate Commerce Commission, complainant, to the answer of the Chicago, Milwaukee & St. Paul Railway Company.

This repliant, saving and reserving now and at all times hereafter, all and all manner of advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereto, say that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this that any other matter or thing whatsoever in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed, or denied, is true. All which maters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly pray, as in and by its said bill it has already prayed.

S. H. BETHEA,
Solicitor for Complainant.

(Endorsed:) Filed June 20, 1899. S. W. Burnham, clerk.

186 REPLICATION TO ANSWER.

In the circuit court of the United States, northern district of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON & QUINCY R. R. Co. et al. } In chancery. 25101.

The replication of the Interstate Commerce Commission, complainant, to the answer of the Chicago & Alton Railroad Company.

This repliant, saving and reserving now and at all times hereafter, all and all manner of advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto, say that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law to be answered

unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this that any other matter or thing whatsoever in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly pray, as in and by its said bill it has already prayed.

S. H. BETHEA,
Solicitor for Complainant.

(Endorsed:) Filed June 20, 1899. S. W. Burnham, clerk.

187 REPLICATION TO ANSWER.

In the circuit court of the United States, northern district of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON & QUINCY R. R. Co. et al. } In chancery. 25101.

The replication of the Interstate Commerce Commission, complainant, to the answer of the Chicago, Rock Island & Pacific Railway Company.

This repliant, saving and reserving now and at all times hereafter, all and all manner of advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto, say: That it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law, to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this that any other matter or thing whatsoever in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed, or denied, is true. All which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly pray, as in and by its said bill it has already prayed.

S. H. BETHEA,
Solicitor for complainant.

(Endorsed:) Filed June 20, 1899. S. W. Burnham, clerk.

188 REPLICATION TO ANSWER.

In the circuit court of the United States, northern district of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON & QUINCY R. R. Co. et al. } In chancery. 25101.

The replication of the Interstate Commerce Commission, complainant, to the answer of the Atchison, Topeka & Santa Fe Railway Company.

This repliant, saving and reserving now and at all times hereafter, all and all manner of advantage of exception which may be had or taken to

the manifold insufficiencies of the said answer of the said defendant, for replication thereunto, say: That it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law, to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this that any other matter or thing whatsoever in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed, or denied, is true. All which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly pray, as in and by its said bill it has already prayed.

S. H. BETHEA,
Solicitor for complainant.

(Endorsed:) Filed June 20, 1899. S. W. Burnham, clerk.

189 REPLICATION TO ANSWER.

In the circuit court of the United States, northern district of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON & QUINCY R. R. Co. et al. } In chancery. 25101.

The replication of the Interstate Commerce Commission, complainant, to the answer of the Wabash Railroad Company.

This repliant, saving and reserving now and at all times hereafter all and all manner of advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto, say that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law, to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed, or denied, is true. All which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly pray, as in and by its said bill it has already prayed.

S. H. BETHEA,
Solicitor for Complainant.

(Endorsed:) Filed June 20, 1899. S. W. Burnham, clerk.

190 REPLICATION TO ANSWER.

In the circuit court of the United States, northern district of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON & QUINCY R. R. Co. et al. } In chancery. 25101.

The replication of the Interstate Commerce Commission, complainant, to the answer of the Illinois Central Railroad Company.

This repliant, saving and reserving now and at all times hereafter all

and all manner of advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto, say that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law, to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed, or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly pray, as in and by its said bill it has already prayed.

S. H. BETHEA,
Solicitor for Complainant.

(Endorsed:) Filed June 20, 1899. S. W. Burnham, clerk.

Afterwards, to wit, on the 26th day of June, 1899, being one of the days of the May adjourned term of said court, in the record of proceedings thereof in said entitled cause before Hon. Christian C. Kohlsaat, district judge, appears the following entry, to wit:

191 *Order.*

Circuit court of the United States, northern district of Illinois, northern division.

MONDAY, *June 26, 1899.*

Present: Hon. Christian C. Kohlsaat, district judge.

THE INTERSTATE COMMERCE COMMISSION,
vs.
THE CHICAGO, BURLINGTON & QUINCY RAILROAD Company, The Chicago Great Western Railway Company, The Chicago & North-Western Railway Company, The Chicago, Milwaukee & St. Paul Railway Company, The Chicago & Alton Railroad Company, The Chicago, Rock Island and Pacific Railway Company, The Atchison, Topeka & Santa Fe Railway Company, The Illinois Central Railroad Company. } 25101.

Upon motion it is ordered by the court that the demurrer to the bill be set for hearing Nov. 6th next.

Afterwards, to wit, on the 6th day of November, 1899, being one of the days of the October adjourned term of said court, in the record of proceedings thereof in said entitled cause before Hon. Christian C. Kohlsaat, district judge, appears the following entry, to wit:

192 *Order.*

Circuit court of the United States, northern district of Illinois, northern division.

MONDAY, *November 6, 1899.*

Present: Hon. Christian C. Kohlsaat, district judge.

INTERSTATE COMMERCE COMMISSION,
vs.
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY et al. } 25101.

Now come the parties by their solicitors. This cause comes on to be heard on the pleadings and proofs heretofore filed herein. The court after hearing the arguments of counsel in part and the hour for adjournment having arrived postpones the further consideration of this cause until to-morrow morning.

Afterwards, to wit, on the 7th day of November, 1899, being one of the days of the October adjourned term of said court, in the record of proceedings thereof in said entitled cause before Hon. Christian C. Kohlsaat, district judge, appears the following entry, to wit:

Order.

Circuit court of the United States, northern district of Illinois, northern division.

TUESDAY, *November 7, 1899.*

Present: Hon. Christian C. Kohlsaat, district judge.

INTERSTATE COMMERCE COMMISSION,
vs.
CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY et al. } 25101.

This cause came on to be further heard on pleadings and proofs. And the court after hearing the arguments of counsel in conclusion takes the matter under advisement.

193 In the circuit court of the United States for the northern district of Illinois, northern division.

Present, the Honorable C. C. Kohlsaat, judge, sitting in equity.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY AND OTHERS. } In equity. No.

Certificate of evidence.

Be it remembered that heretofore, to wit, on the sixth day of November, 1899, the above-entitled cause came on to be tried before the Hon.

C. C. Kohlsaat, presiding as judge of said court, upon the petition of the petitioner, answers of defendants, and replications of complainant thereto.

On May 1st, 1899, an affidavit was presented to the court in this case and by order of the court was filed, which was afterwards lost from the files. A copy of this affidavit has been substituted in the files of the court by order of the court, and of that affidavit the following is a copy:

"In the circuit court of the United States of America for the northern district of Illinois, northern division.

"THE INTERSTATE COMMERCE COMMISSION
vs.
"THE CHICAGO, BURLINGTON & QUINCY R. R. et al. } In equity. 25101.

"T. W. Tomlinson, being first duly sworn, deposes and says that he is the railway representative of the Chicago Live Stock
194 Exchange, and is familiar with the subject-matter of the cause of action in the above-entitled suit, and that the money value involved in said cause, exclusive of the costs of this suit, exceeds one thousand dollars per day.

"May 1st, 1899.

"(Signed) T. W. TOMLINSON.

"Subscribed and sworn to before me this first day of May, 1899.

"C. W. BAKER, *Notary Public.*"

The petitioner to maintain the issues on its part offered and read in evidence duly certified copies of the original papers, namely, the reports and findings of fact of the Interstate Commerce Commission and the orders issued thereon by it, of which copies are attached to the petition of petitioner before this court, as Exhibits C, D, E, and F, and such certified copies of said papers were received in evidence without objection and marked Exhibits A, B, C, and D. Inasmuch as these exhibits are exact duplicates of said Exhibits C, D, E, and F, attached to the petition in this case, they are not repeated here.

It was agreed and admitted by defendant in this case that duly certified copies of each of the foregoing papers mentioned were duly served upon each of the defendants in this case as averred in said petition.

It was also admitted by the defendants and each of them that neither of said defendants had complied with said orders or either of them, but, on the contrary, said defendants and each of them refused to conform t'ereto.

Petitioner also offered in evidence a certificate of rates for transportation of live stock from points on defendants' lines therein named to Chicago from 1887 to 1899, in the words and figures following, to wit:

Whereupon counsel for defendants asked for time to examine the document with the understanding that they would announce their objections later if they had any to offer, which document was marked "Exhibit E," and is in words and figures as follows, to wit:

INTERSTATE COMMERCE COMMISSION, *Washington, Secretary's Office.*

I, Edward A. Moseley, secretary of the Interstate Commerce Commission, do hereby certify that the rates of freight on cattle, hogs, and sheep shown on the statements hereto attached, from and to points specified and on dates stated therein, were compiled from schedules of rates, fares, and charges filed with said Commission in pursuance of the requirements of section six of the act to regulate commerce, which said schedules of rates, fares, and charges are more particularly described in each of said statements.

In witness whereof I have hereunto set my hand and affixed the seal of said Commission this 1st day of September, A. D. 1899.

[SEAL.]

EDW. A. MOSELEY, *Secretary of the Interstate Commerce Commission.*

INTERSTATE COMMERCE COMMISSION, *Auditor's Office, August 25, 1899.*

Statement showing rates on cattle and sheep from Colorado common points to Chicago, Ill., Milwaukee, Wis., East St. Louis, Ill., Kansas City, Mo., from 1887 to present date.

Date of changes.	To—	Chicago, Ill., and Milwaukee, Wis.						East St. Louis, Ill.						Kansas City, Mo.					
	Tariffs showing rates.	Cattle.		Sheep.				Cattle.		Sheep.				Cattle.		Sheep.			
				S. D.		D. D.				S. D.		D. D.				S. D.		D. D.	
		Per car.	Per 100 lbs.	Per car.	Per 100 lbs.	Per car.	Per 100 lbs.	Per car.	Per 100 lbs.	Per car.	Per 100 lbs.	Per car.	Per 100 lbs.	Per car.	Per 100 lbs.	Per car.	Per 100 lbs.	Per car.	Per 100 lbs.
1887, Sept. 27	Union Pac. 651	$105 00						$87 50											
1889, Apr. 22	" " 1040					$105 00						$87 50							
1888, June 27	" " 795													$65 00		$39 00		$65 00	
1889, Aug. 24	Trans Mo. 73													65 00		39 10		65 00	
1889, Sept. 17	" " 75	98 00		58 00		98 00		80 50		48 30		80 50							
1890, Feb'y 16	" " A. M. 16 to 75	86 00						68 60											
Aug. 25	" " 3 to 134	95 00		57 00		95 00		77 50		46 50		77 50							
1894, June 1		95 00		57 00		95 00		77 50		46 50		77 50		65 00		39 00		65 00	
1896, Jan'y 1	Trans Mo. A. M. 1 to 1E		47½c		57c		47½c		38½c		46½c		38½c		31		39		31
1857, Jan'y 27	" " 1 F I. C. C. 54	95 00		57 00		95 00		77 50		46 50		77 50		66 00		39 00		65 00	
Aug. 10 to present date.	" " A. M. 11 to 18 I. C. C. 54		47		51		51		38½		42½		42½		31		34		34

(The above rates to Chicago and Milwaukee also apply to Cudahy, Wis.)
For application of rates, see attached sheets.

7734—10

THE CHICAGO, BURLINGTON AND QUINCY R. R. CO. ET AL. 145

197 September 27, 1887. Union Pacific 651.

Rates to apply to ordinary cars of not less than 29 feet, but not exceeding 30 feet 6 inches in length, internal measurement.

Upon cars not embraced in the foregoing class the following will govern:

Less than 29 feet in length 94%
Over 30 feet 6 in. to and including 32 feet in length 104%
Over 32 feet in length and including 33 feet in length 107%
Over 33 feet in length 110%
of the rates established for cars of not less than 29 feet, but not exceeding 30 feet 6 inches in length.

June 27, 1888. Union Pacific joint frt. tariff 795.

Cars 33 feet in length, but lesss than 34 feet 97%
32 34 ..... 94%
31 32 ..... 91%
30 31 ..... 88%
29 and under 85%

August 24, 1889. Trans-Missouri Freight Assn. joint frt. tariff 73.

Rates apply on cars, either common or palace, of 29 feet to 30½ feet, inside measurement; such cars will be known as standard cars.

Cars less than 29 feet will be charged 94% of the tariff for standard cars.

Cars over 30½ feet to and including 32 feet 104%
32 33½ 107%
33½ 36 ..... 110%

36 in length, inside measurement, charge 3% for each additional foot or fractional part thereof.

September 17, 1889. Trans. Mo. Frt. Assn. jt. frt. tariff No. 75.

Same conditions as No. 73 (last above).

August 25, 1890. Trans. Mo. Frt. Assn. jt. frt. tariff No. 134.

Rates will apply in cars, either common or palace, of 29 feet to 30½ feet, inside measurement; such cars will be known as standard cars.

Cars less than 29 feet will be charged 94% of standard cars.

Cars over 30½ feet to and including 32 feet 104%
32 33½ 107%
33½ 36 ..... 110%
36 , inside measurement, charge 1% for each additional two (2) feet, or fractional part thereof, over 36 feet in length.

198 January 1, 1896. Trans. Mo. frt. rate comm. amendment No. 1 to joint frt. tariff No. 1–E.

(Rates in cents per 100 lbs.)

	Cattle.	Sheep. S. D.	Sheep. D. D.
Cars 31 feet or under in length, inside measurement	19.000	10.000	19.000
Cars over 31 feet, but not in excess of 33 feet 9 in. in length, inside measurement	20.500	11.000	20.500
Cars over 33 feet 9 in. to and including 36 feet in length, inside measurement	22.000	12.000	22.000

The minimum charge on live stock, rated in cents per 100 pounds, loaded in cars over 36 feet in length, inside measurement, will be 1% additional for each 2 feet, or fractional part thereof, over cars 36 feet in length.

January 27, 1897. Trans. Mo. frt. rate common joint frt. tariff No. 1-F.

Rates apply on cars, either common or palace, of 29 feet to 30½ feet, inside measurement; such cars will be known as standard cars.

Cars less than 29 feet will be charged 94% of tariff rate per standard car.

Cars over 30½ feet to and including 32 feet, 104% of tariff rate per standard car.

Cars over 32 feet to and including 33 feet 9 in., 107% of tariff rate per standard car.

Cars over 33 feet 9 in. to and including 36 feet, 110% of tariff rate per standard car.

Cars over 36 feet to and including 38 feet, 113% of tariff rate per standard car.

Cars over 38 feet to and including 40 feet, 116% of tariff rate per standard car.

Cars over 40 feet will be charged 125% of tariff rate per standard car.

August 10, 1897. Trans. Mo. frt. rate common amendment No. 11 to joint frt. tariff No. 1-F.

(Rated in cents per 100 pounds.)

	Cattle.	Sheep.
Cars 31 feet and under in length, inside measurement.	21.500	19.000
Cars over 31 feet to, but not in excess of 33 feet 9 in. in length, inside measurement	23.000	20.500
Cars over 33 feet 9 in. to and including 36 feet in length, inside measurement	24.000	22.000

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INTERSTATE COMMERCE COMMISSION,
Auditor's Office, August 25, 1899.

Statement showing rates on cattle from Fort Worth, Texas, to Chicago, Ill., East St. Louis, Ill., and Kansas City, Mo., from 1887 to present date (Aug. 25, 1899).

Date of changes.	To	Chicago, Ill.		East St. Louis, Ill.		Kansas City, Mo.	
	Tariff showing rates.	Cattle.		Cattle.		Cattle.	
		Per car.	Per 100 lbs.	Per car.	Per 100 lbs.	Per car.	Per 100 lbs.
1888 Nov. 15	Mo., Kan. & T. 13	$102.50		$80.00		$62.50	
1899 Feby. 10	" 56				40c		31½c
" 20	Sup. 2 to 56		51½c				
Oct. 25	349		48½		37		28½
1890 Feby. 17	Sup. 3 to 349		46				33½
Mch. 20	349—A	80.75			36		31
May 10	349—B		41		34½		29½
Sept. 15	565	87.90					
" 14	349—C				36		30
1891 May 20	622	93.60			39		33
1894 June 1		$93.60			39c		33c
1896 Feby. 24	M., K. & T. 733		49½		39		33
Aug. 26	Sup. 4 to 733	88.17		68.70		57.30	
Oct. 1	733—A		44½		34		28
1897 Mch. 12	So. W. Fr. Assn. I C C 34		44½		34		28
Oct. 5	So. W. Frt. Bureau " 451		44½		34		28
1898 May 17	" " Sup. 34 to ICC51		38		36		28
July 25	" " Supp. 43 to " 51		44½		34		28
Oct. 18	So. W. Bureau ICC 93		44½		34		28
1899 Feby. 1	" " Supp. 20 ICC 93		46½		36½		30½
" 1	So. W. Bureau " 108		46½		36½		30½
" 6	" " Supp. 3 ICC108		41½		31½		25½
April 15 to present date.	" " " 3 "		46½		36½		30½

No through rates published from Ft. Worth, Texas, to Milwaukee, or Cudahy, Wis.

200

Fort Worth rate.

November 15, 1888. Missouri, Kansas & Texas joint freight traffic, No. 13.

To St. Louis, Mo.

	Beef cattle.
Cars under 29 feet	$75.00 per car.
" 29 feet to 30 feet 6 in., inclusive	80.00 " "
" over 30 feet 6 in. to 32 feet	83.20 " "
" " 32 feet to 33 feet, inclusive	85.60 " "
" " 32 feet to 34 " "	88.00 " "
" " 34 " to 35 " "	90.00 " "
" " 35 " to 36 " "	92.00 " "
" " 36 " to 37 " "	94.00 " "
" " 37 "	96.00 " "

To St. Louis and Kansas City.

February 10, 1889. Mo., K. & Texas joint frt. tariff, No. 56.
Rates per 100 pounds.

	Cattle. Min. weight.
Cars 28 feet & 6 in. and under	19,000 lbs.
" over 28 feet & 6 in. to and including 31 feet	20,000 "
" " 31 " to and including 32 "	21,000 "
" " 32 " to " 33 "	21,500 "
" " 33 " to " 34 "	22,000 "
" " 34	23,000 "

February 20, 1889. Supplement No. 2 to M., K. & T. J. F. T., No. 56. Same as last above.

October 25, 1889. M., K. & T. J. T. F. tariff, No. 349.
Rate per 100 pounds.

	Cattle (beef). Min. weight.
Cars 28 feet 6 inches and under	19,000 lbs.
Over 28 feet 6 inches to 31 feet, inclusive	19,000 "
31 feet to 32 feet, inclusive	20,500 "
32 feet to 33 feet	20,500 "
33 feet to 34 " "	20,500 "
34 feet	22,000 "

March 20, 1890. M., K. & T. J. T. frt. tariff, No. 349–A.
Rate per car to Chicago.

	Beef cattle.
Cars 28 feet 6 in. and under	$80.75 per car.
Over 28 feet 6 in. to 31 feet	80.75 " "
31 " to 32 feet, inclusive	87.15 " "
32 to 33 "	87.15 " "
33 to 33 feet 6 in., inclusive	87.15 " "
33 feet 6 in. to 34 feet, inclusive	88.45 " "
34 feet	93.50

201 May 10, 1890. Mo., Kan. & Texas Joint through Frt. T. 349–B.
Rates in cents per 100 pounds.

To East St. Louis and Kansas City, same as M., K. & T. J. T. F. Tariff No. 349 of Octo. 25, 1889.

May 10, 1890. M. K. & T. J. F. Tariff No. 349–B.
Rates in cents per 100 pounds.

	Beef cattle.
In cars 31 feet and under	19,000 lbs.
33 feet 6 in. and over 31 feet	20,500 "
36 feet and over 33 feet & 6 in	22,000

exceeding 36 feet in length, 3 per cent additional for each foot or fraction thereof over 36 feet.

September 15, 1890. M., K. & T. Jt. Thro. Frt. Tariff No. 565.
Rate per car to Chicago, Ill.

Cars 31 feet and under	$87.90 per car.
33 feet 6 in. and over 31 feet	94.80 " "
36 feet and over 33 feet 6 in	101.75

Cars over 36 feet in length 3 per cent additional for each foot or fraction thereof over 36 feet.

September 15, 1890. M., K. & T. J. T. Frt. Tariff No. 349–C.

Rates in cents per 100 pounds to E. St. Louis and Kansas City.

Same as M., K. & T. 349–B., of May 10, 1890.

May 20, 1891. M., K. & T. J. T. F. T. No. 622.

Rates in cents per 100 pounds to E. St. Louis and Kansas City.

Cars 31 feet and under	19,000 lbs
Cars over 31 feet, including 33 feet 6 inches	20,500 "
33 feet 6 in., including 36 feet	22,000

Cars exceeding 36 feet in length 3 per cent additional for each foot or fraction thereof over 36 feet.

Per car to Chicago, Ill.

Cars 31 feet and under	$93.60 per car
33 feet 6 in. and over 31 feet	100.95
36 feet and over 33 feet 6 inches	108.35 " "

Cars over 36 feet in length 3 per cent additional for each foot or fraction thereof over 36 feet.

202 February 24, 1896. M., K. & T. Joint Thro. Frt. Tariff No. 733 I. C. C. No. A 24.

Rates in cents per 100 pounds to Chicago, Ill.

In cars 31 feet and under	19,000 lbs.
" 33 feet 6 in. and over 31 feet	22,000 "
" 36 feet and over 33 feet 6 in	23,000 "
" 40 " and over 36 "	25,300 "

August 26, 1896. M., K. & T. Thro. F. T. No. 733 I. C. C. A. 24. Supplement No. 4.

Rates per car.

Apply on common or palace cars of 29 feet to and including 30 feet 6 inches, inside measurement. Known as standard cars.

Cars less than 29 feet, inside measurement, 94% of standard car rate.

Cars over 30 feet 6 in. to and including 32 feet, inside measurement, 104% of standard car rate.

Cars over 32 feet to and including 33 feet 9 in., inside measurement, 107% of standard car rate.

Cars over 33 feet 9 in. to and including 36 feet, inside measurement, 110% of standard car rates.

Cars over 36 feet to and including 38 feet, inside measurement, 113% of standard car rate.

Cars over 38 feet to and including 40 feet, inside measurement, 116% of standard car rate.

Cars over 40 feet, 125% of standard car rate.

October 1, 1896. M., K. & T. Joint T. Frt. T. No. 733 A. I. C. C. No. 226.

Rates in cents per 100 pounds.

	Min. weight.
In cars 31 feet and under	19,000 lbs.
" 33 feet 6 inches and over 31 feet	20,500 "
" 36 " and over 33 feet 6 inches	22,000 "
" 40 " and over 36 feet	24,200 "

No change to present date. (Aug. 25, 1899.)

203 INTERSTATE COMMERCE COMMISSION,
Auditor's Office, August 25, 1899.

Rates on cattle, hogs, and sheep from Lower Missouri River points, Kansas City, etc., to St. Louis, Mo., from 1887 to present date (August 25, 1899).

Date of changes.	Tariffs showing rates.	To St. Louis, Mo.							
		Cattle.		Hogs.			Sheep.		
		Per car.	Per 100 lbs.	Per car.	In cents per 100 lbs.		Per car.	In cents per 100 lbs.	
					S. D.	D. D.		S. D.	D. D.
1887. Decr. 20.	Western Frt. Assn. No. 9.	$42.50		$30.00			$30.00		
*1888. Oct. 1.	" " " No. 1.	42.50		25.00			25.00		
" 15.	" " Cir. " 2.		18¢		17½			20	
1889. Jany. 1.	" " " 8.				15				
July 19.	" " " 36.		13½		13			14½	
Decr. 21.	" " " 56.		9½						
1890. Jan. 30.	" " " 60.		7½						
Aug. 1.	" Tariff 5.		7½		7½			14½	
" 25.	" Cir. 72.		18½		21½			21½	
1891. Jan. 1.	" Tariff 6.		14½		15			17½	
1894. June 1.			14½		15			17½	
" Decr. 1 to present date.	West. Frt. A. M. 10 to 181.		14½		18½			17½	

* Applies only from Kansas City; other points, cattle $10.00, sheep and hogs $5.00 higher.

204 *Rates on cattle, hogs, and sheep from Lower Missouri River points, Kansas City, etc., to Chicago and Milwaukee from 1887 to present date (Aug. 24, 1899).*

Date of tariff.	Tariffs showing rates.	To Chicago, Ill., and Milwaukee, Wis.							
		Cattle.		Hogs.			Sheep.		
		Per car.	Per 100 lbs.	Per car.	Per 100 lbs.		Per car.	Per 100 lbs.	
					S. D.	D. D.		S. D.	D. D.
1887. Decr. 20.	Western Frt. Assn. No. 9.	$60.00		$45.00			$45.00		
*1888. Oct. 1.	1.	60.00		40.00			40.00		
" 15.	Cir. No. 2.		27½		25			27½	
1889. Jany. 1.	8.				25				
July 19.	36.		22		25			22	
Dec. 21.	56.		18						
1890. Jan. 30.	60.		12½						
June 25.	70.		18 & 12½						
Aug. 1.	Tariff 5.		18 & 12½		22 & 25			22	
" 25.	Cir. 72.		22		25			25	
1891. Jany. 1.	Tariff 6.		23½		22			25	
1894. June 1.			23½		22			25	
1894. Dec. 1 to Aug. 25, 1899.	A. M. to 181.		23½		23½			25	

* Apply from Kansas City only; other points, cattle $10.00; hogs and sheep $5 higher.

205 **December 20, 1889. Western Freight Association No 9. Rate per car.**

The rates named apply to cars not less than 29 feet but not exceeding 30 feet & 6 inches in length, internal measurement.

Less than 29 feet	94%	of standard car.
Over 30 feet 6 in. to and including 32 feet	104%	" " "
" 32 feet to and including 33 feet	107%	" " "
" 33 feet	110%	" " "

October 1, 1888. Western Frt. Assn. No. 1.
Rates per car.
The rates named apply to cars 34 feet in length, inside measurement.

Cars 33 feet in length but less than 34 feet	97%
" 32 " in length but less than 33 "	94%
" 31 " " " " " " 32 "	91%
" 30 " " " " " " 31 "	88%
" 29 " " " and under	85%

October 15, 1888. Western Freight Circular No. 2.
Rates in cents per 100 pounds.

	Min. weight.	Cattle.	Hogs. S D	Sheep. S D
Cars 31 feet and under		20.000	15.000	12.000
" 33 feet 6 in. and over 31 feet		21.500	16.000	12.900
" over 33 feet & 6 inches		23.000	17.000	13.800

July 19, 1889. Western Freight Circular 36 car.
Rates in cents per 100 pounds.

	Min. weight.	*Cattle.	Hogs. S D	Sheep. S D
Cars 31 feet and under	19.000 lbs.		15.000 lbs.	10.000 lbs.
33 feet 6 inches and over 31 feet		20.500	16.000	11.000
over 33 feet 6 inches		22.000	17.000	12.000

Sheep in D D cars 28 feet in length, min. weight per car, 18.000 lbs.

206 November 25, 1890. Western Frt. Assn. Cir. No. 78.

	Min. weight.	Cattle, hogs, & sheep. D D	Hogs. S D	Sheep. S D
Cars 31 feet and under	19.000 lbs.		15.000 lbs.	10.000 lbs.
Cars 34 feet and over 31 feet	20.500 "		16.000 "	11.000 "
Cars over 34 feet	22.000 "		17.000 "	12.000 "

January 15, 1891. Western Frt. Assn. Cir. No. 80.

	Min. weight.	Cattle, also hogs & sheep. D D	Hogs. S D	Sheep. S D
Cars 31 feet and under	19.000 lbs.		15.000 lbs.	10.000 lbs.
Cars 33 feet & 6 inches and over 31 feet	20.500 "		16.000 "	11.000 "
Cars over 33 feet & 6 inches	22.000 "		17.000 "	12.000 "

Sheep D D cars 28 feet in length, min. weight, 18,000 lbs. per car.
March 15, 1893. Amendmt. 11 to J. F. T. No. 157 Western Frt. Assn.

	Min. weight.	Cattle, also hogs & sheep. D D	Hogs. S D	Sheep. S D
Cars 31 feet and under	19.000 lbs.		15.000 lbs.	10.000 lbs.
Cars over 31 feet but not in excess of 33 feet 9 inches	20.500 "		16.000 "	11.000 "
" 33 feet 9 inches	22.000 "		17.000 "	12.000 "

*Hogs & sheep in D. D. cars same as cattle, min. weight (W. F. Cir. 86 of July 15, 1891.

April 1, 1897. Missouri River points to St. Louis and Chicago. Western Frt. Assn. J. F. Tariff No. 7.

Minimum weight.	Cattle, also sheep & hogs. D D	Hogs. S D	Sheep. S D
Cars 31 feet and under	19.000 lbs.	15.000	10.000
Cars over 31 feet, but not in excess of 32 feet & 9 inches	20.500 "	16.000	11.000
Cars 33 feet 9 inches to and including 36 feet in length	22.000 "	17.000	12.000

207 January 2, 1899. W. T. L. Comm. I. C. C. 40.

Minimum weight.	Cattle, also sheep & Hogs, D. D.	Hogs, S. D.	Sheep, S. D.
Cars 31 feet and under	19,000 lbs.	15,000	10,000
Cars 33 feet & 9 inches and over 31 feet	20,500	16,000	11,000
Cars 36 feet 6 inches and over 33 feet and 9 inches	22,000	17,000	12,000
Cars 40 feet and over 36 feet and 6 inches	24,000	19,000	14,000
Cars over 40 feet	26,000	21,000	16,000

208 INTERSTATE COMMERCE COMMISSION,
Auditor's Office, August 25, 1899.

Rates on cattle, hogs and sheep from St. Paul and Minneapolis, Minn., to East St. Louis, Ill., and Chicago, Ills., from 1887 to present date, August 25, 1899.

Date of change.	To	East St. Louis, Ill.						Chicago, Ill.					
		Cattle.		Hogs, S. D.		Sheep, S. D.		Cattle.		Hogs, S. D.		Sheep, S. D.	
	Tariff showing rates.	Per car.	Per 100 lbs.	Per car.	Per 100 lbs.	Per car.	Per 100 lbs.	Per car.	Per 100 lbs.	Per car.	Per 100 lbs.	Per car.	Per 100 lbs.
1887, June 16	W. Frt. Assn. No. 1	$63.00		$63.00		$47.25		$60.00		$60.00		$45.00	
" Aug. 7	" " " " 2	52.00		46.50		35.00		49.50		44.50		33.00	
1888, Mch. 26	Notice 4	52.00		46.50		35.00		49.50		44.00		33.00	
" Oct. 10	No. 25	55.00		55.00		37.00		52.00		52.00		35.00	
" 25	A. M. 1 to 25		26¼		31½		31½		25		30		30
1889, Sept. 5	65		26¼		28.35		28.35		25		27		27
1894, June 1			26¼		28.35		28.35		25		27		27
1894, June 1 to present date.	65		26¼		28.35		28.35		25		27		27

Chicago rates apply to Milwaukee, Wis., and Cudahy, Wis.

209 From St. Paul & Minneapolis.

June 16, 1887. Western Frt. Assn. No. 1.

Rates per car.

Rates apply in cars not less than 29 feet and not exceeding 30 feet 6 in. in length, internal measurement. "Standard car."

Cars less than 29 feet in length ..... 94% of standard car
" over 30 feet 6 in. to and including 32 feet in length ..... 104 " of " "
Cars over 32 feet to and including 33 feet in length. 107 " " "
" " 33 feet in length ..... 110 " "

August 7, 1887. Western Frt. Assn. No. 2.
Same as last above.
October 10, 1888. Western Frt. Assn. J. F. Trff. No. 25.
Rate per car:
Rates apply on cars 34 feet or over in length, internal measurement.
Cars 33 feet in length and less than 34 feet, 97% of rates established for 34 feet cars.
Cars 32 feet in length and less than 33 feet, 94% of rates established for 34 feet cars.
Cars 31 feet in length and less than 32 feet, 91% of rates established for 34 feet cars.
Cars 30 feet in length and less than 31 feet, 88% of rates established for 34 feet cars.
Cars under 30 feet in length, 85% of rates established for 34 feet cars.
October 25, 1888. Amendm't 1 to Western Frt. Assn. J. F. T. No. 25.
Rates in cents per 100 pounds.

Minimum weight.	Cattle.	Sheep. D. D.	Sheep. S. D.
Cars 31 feet or under in length, inside measurement	20.000	20.000	12.000
Cars over 31 feet, not to exceed 33 feet 6 in. in length, inside measurement	21.500	21.500	12.900
Cars over 33 feet 6 in., internal measurement	23.000	23.000	13.800

210 September 5, 1889. Western Frt. Assn. J. F. T. No. 65.
Rates in cents per 100 pounds.

Minimum weight.	Cattle.	Sheep. D. D.	Sheep. S. D.
Cars 31 feet or under in length, inside measurement	19.000	19.000	10.000
" over 31 feet but not to exceed 33 feet 6 inches, inside measurement	20.500	20.500	11.000
" over 33 feet 6 inches, inside measurement	22.000	22.000	12.000

January 2, 1899. Western Trunk Line Comm. I. C. C. 39.

Minimum weight.	Cattle.	Sheep. D. D.*	Sheep. S. D.
Cars 31 feet and under	19.000 lbs.	19.000	10.000
Cars 33 feet 9 inches and over 31 feet	20.500	20.500	11.000
" 36 feet 6 inches and over 33 feet 9 inches	22.000	22.000	12.000
" 40 " and over 36 feet 6 inches	24.000	24.000	14.000
Cars over 40 feet	26.000	26.000	16.000

211 Miles City, Mont. INTERSTATE COMMERCE COMMISSION,
Auditor's Office, August 25, 1899.

*Sheep D. D. cars 28 feet and under in length, 18,000 lbs.

Rates on cattle from Miles City, Montana, to St. Paul, Minneapolis, Chicago, and Milwaukee from 1887 to present date (August 25, 1899).

Date of changes.	To.....	St. Paul and Minneapolis.		Chicago and Milwaukee.	
	Tariff showing rates.	Cattle.		Cattle.	
		Per car.	Per 100 lbs.	Per car.	Per 100 lbs.
1888, Mch. 15	Nor. Pacific 257	$70.00			
" Aug. 10	" " 389	72.00			
1890, " 21	" " 1267	68.00			
1893, July 12	" " 2270 ICC A491	74.00			
1894, June 1		74.00			
1897, Aug. 10 to present date.	" " 1322 ICC A568		34c.		
1887, Sept. 25	Nor. Pac. 140			101.50	
1890, July 17	" " 1189			95.00	
1893, May 22	" " 2259 ICC A215			105.00	
1894, June 1				105.00	
1897, August 10 to present date.	" " 1331 ICC A567				48c.

212 **Miles City to St. Paul and Minneapolis.**

March 15, 1888. Northern Pacific, No. 257. Rate per car:

Rates apply in stock cars not exceeding 30 feet in length, inside measurement.

Cars over 30 feet to and including 31 feet in length, 103% of rate.
31 " to " 32 " " 107% of rate.
32 " to " 33 " " 110% of rate.

August 10, 1888. Northern Pacific, No. 389. Rate per car:

Cars 30 feet or less, inside measurement	$72.00
Cars over 30 feet to and including 33 feet, inside measurement	79.00
Cars over 33 feet to and including 34 feet, inside measurement	81.35
Cars over 34 feet to and including 35 feet, inside measurement	83.50
Cars over 35 feet to and including 36 feet, inside measurement	86.40
Stable or palace cars 36 feet or less in length, inside measurement	90.00

July 17, 1889. Northern Pacific, No. 709. Rates per car:

Cars 30 feet or less, inside measurement	$72.00 per car
Cars over 30 feet to and including 33 feet	79.00 "
" over 33 feet to " 34 "	81.35 "
Stable or palace cars 36 feet or less in length; also common cars over 34 feet, but not over 36 feet in length.	86.40 "

August 21, 1890. Northern Pacific, No. 1998. Rates per car:

Cars 30 feet or less	$68.00 per car
" over 30 feet to and including 33 feet	72.75
Stable or palace cars 36 feet or less in length	76.50

August 25, 1892. Northern Pacific, No. 1998. Rates per car:

Cars 30 feet or under	$68.00
" over 30 feet to and including 33 feet	72.75
Stable or palace cars 36 feet or less in length	74.80

213 July 12, 1893. Northern Pacific No. 2270 I. C. C. A–491. Rates per car:

Cars 30 feet and under	$74.00
" over 30 feet to and including 33 feet	80.00
Stable or palance cars 36 feet or less in length	82.00

Miles City to St. Paul and Minneapolis.

August 10. 1897. Northern Pacific I. C. C. A. 568 (1331).
Rates in cents per 100 pounds.

	Mim. weight.	Cattle.
Cars 31 feet or under in length, inside measurement.....	21,500 lbs.	
" over 31 feet to & not in excess of 33 feet 9 inches, inside measurement.....	23,000	
" " 33 feet 9 in. to and including 40 feet, inside measurement.....	24,000	
" " 40 feet in length, inside measurement	26,000	

Miles City to Chicago & Milwaukee.

September 25, 1887. Northern Pacific No. 140.
Rates per car:
The rates named in this tariff will be considered as applying to cars not exceeding 30 feet 6 inches in length, inside measurement. Proportionate charge will be made for cars of greater length.

August 1, 1888. Northern Pacific No. 376.

Cars 30 feet and under, inside measurement.....	$101.50
Cars over 30 feet to and including 32 feet, inside measurement.	110.00
" 33 " " 34 "	114.70
" 34 " " 35 "	117.73
" 35 " " 36 "	121.80
Stable or palace cars 36 feet or less in length.....	126.86

August 18, 1888. Northern Pacific No. 402.
Cattle or sheep in stable or palace cars 36 feet or less in length $125.34.

July 10, 1889. Northern Pacific No. 690.

Cars 30 feet or less in length, inside measurement.....	$101.50
Cars over 30 feet to and including 33 feet, inside measurement.	110.00
" 33 feet to " 34 " "	114.70
Stable or palace cars 36 feet in length; also common cars over 34 feet, but not over 36 feet in length	121.80

214 July 17, 1890. Northern Pacific No. 1189.

Cars 30 feet or less in length, inside measurement.....	$95.00
Cars over 30 feet to and including 33 feet, inside measurement.	101.70
Stable or palace cars 36 feet or less, inside measurement	106.90

August 18, 1892. Northern Pacific No. 1997. (I. C. C. A.–215.)

Cars 30 feet or less in length, inside measurement.....	$95.00
Cars over 30 feet to and including 33 feet	101.70
Stable or palace cars 36 feet or less	104.50

May 22, 1893. Northern Pacific 2259. (I. C. C. No. A–215.)

Cars 30 feet or less in length, inside measurement	$105.00
Cars over 30 feet to and including 33 feet, inside measurement.	112.35
Stable or palace cars 36 feet or less " "	115.50

Miles City to Chicago & Milwaukee.

August 10, 1897. Northern Pacific I. C. C. A. 567.
Rates in cents per 100 pounds:

	Cattle.
Cars 31 feet or under, inside measurement	21,500 lbs.
Cars over 31 feet to but not in excess of 33 ft. 9 in	23,000 "
" " 33 feet 9 in. including 40 feet	24,000 "
" " 40 feet in length, inside measurement	26,000 "

To the introduction of which Exhibit E the defendants then and there objected, and the objection was sustained by the court. To which ruling of the court the complainant then and there excepted.

And thereupon petitioner rested its case.

The defendants, to maintain the issues on their part, respectively, offered as a witness A. C. Bird, who was duly sworn according to law, and in response to interrogatories propounded by Mr. Kellogg on behalf of the defendants, orally testified as follows:

(Page 17 of record.) I am "general traffic manager of the Milwaukee road" and have been for five years, and connected with that department since 1883; have been in the railroad service since 1882 at Chicago or St. Louis; have been familiar with the live-stock traffic at Chicago or St. Louis prior to or since 1894.

215 Q. (By Mr. KELLOGG.) Was there or has there been an established differential on live-stock shipments from these points and between the Missouri River stock market and Chicago?

A. None that I have ever known of.

Mr. BETHEA. That's a question of fact; I suppose there is better evidence of that.

(Page 18.)

The COURT. I think that is a question of fact in the knowledge of the man.

Q. Has there ever been any such established differential between Kansas City and Chicago?

A. None that I have ever known of.

Q. Well, you would have known of it?

A. Yes, sir.

Q. Or between Omaha and Chicago?

A. None that I know of.

Q. Or Sioux City?

A. None.

Q. This is, you mean, on shipments of stock from original shipping points to these places, and to Chicago, there has been no established differential?

A. None between those points and Chicago.

The COURT. Now, just what do you mean by established differentials?

(Page 19.)

Mr. BIRD. I would like to qualify my testimony in regard to the Texas business. I am not familiar with that.

(Page 20.)

The COURT. What do you mean Mr. Bird, by an established differential?

A. A fixed difference in the rate from a given point to two competing markets; a difference that can be established, and should govern the rate thereafter.

The COURT. Illustrate.

A. A rate from Chicago to St. Paul being established, it is agreed that the rate from St. Louis should be 106 per cent of the Chicago rate.

The COURT. Six per cent more?

A. Six per cent more. Now, then, the rate from Missouri River points to Chicago and St. Louis were never fixed, and they have fluctuated from time to time, and for that reason I have said no fixed differential existed, certainly none that the company I represented was ever concerned in.

(Page 21.)

Q. That is, from various points west of the Missouri River rates changed to Chicago many times when they didn't change to Kansas City?

A. Yes, sir.

Q. Did they continue up to 1884 and since that time?

A. I can't answer for lines west of the Missouri River; may
216 have fluctuated many times from time to time, but the rates have fluctuated very frequently between the Missouri River and Chicago and St. Louis, when they did not fluctuate from the stock-raising country to the Missouri River.

Q. Now, as to St. Louis, referring to tariffs—your line does not run to St. Louis?

A. No, sir.

Q. Some of the tariffs contain a statement that on live stock shipments from different points west of St. Louis, the rate of Chicago would be $8\frac{1}{4}$ cents, or a certain sum, $8\frac{3}{4}$ perhaps. How was that brought about? Do you know the history of what you may call the differentials?

A. Yes, sir.

Mr. DAY. I submit that is not relevant.

(Page 26.)

Mr. BETHEA. I move to strike out the first question that was permitted to be answered, and if that is overruled to get the proper exception noted.

The COURT. The motion is overruled. Save the exception.

Mr. BETHEA. Well, now the same objection applies to this question.

The COURT. My judgment would be that if in any of the cases here a differential was established, it would be proper for Mr. Bird to tell the circumstances under that case, if he knows them.

Mr. KELLOGG. I am going to ask him as to Chicago and St. Louis.

Mr. BETHEA. That is the very point; they are bound by their schedules. If they have made any separate arrangements, the Government has nothing to do with that, and for that reason the only proper evidence here is the schedule of rates. There is better evidence and it does not come within the rule respecting experts.

(Page 27.)

The COURT. Ask the question again and save the point.

Q. (By Mr. KELLOGG.) Do you know of any one instance where there was a differential, how that differential was brought about?

(Objected to by petitioner. Overruled. To which ruling petitioner then and there excepted.)

A. On the 4th of May, 1876, a differential was agreed upon.

Q. Between what points?

A. The rate from Kansas City to St. Louis versus the rate from Kansas City to Chicago.

Q. State how that came about; what was the history of it?

A. At that time there were a number of lines operating between St. Louis and Kansas City exclusively, and also lines operating between Kansas City and Chicago. Rivals were in contention with each
217 other for the traffic of the Southwest, which was then wholly to Kansas City. After wrangling more or less for about two years, representatives of the different lines met, and they agreed that the rates should be so adjusted that stock could be divided equally between Chicago and St. Louis; and it was an estimate of the differential of $17.50 that a standard car of that period would produce that result, and it was adopted and held for a short time, for something less than a year.

Q. How much per hundredweight about was that?

A. On cattle that would be, to the best of my judgment, ten or eleven cents per hundredweight.

(Page 28.)

Q. Carloads were less than they are now; isn't that true?

A. Materially less.

Q. Go ahead.

A. Well, on the 25th day of April, 1877, it became——

The COURT. How long did that last?

A. Until the 25th day of April, 1877.

Q. Go ahead now.

A. On the 25th day of April, 1877, there was another meeting of the lines interested in this business, and it was apparent that the large volume of the traffic was coming to Chicago, and it was agreed that the differential should be made $20.00 per car for a given time—I think it was thirty or forty days; at which time, in the absence of further agreement it should revert back to $17.50. When that time came—I don't know exactly when it was—there was a disagreement. Chicago lines said that they had had enough of it and they didn't propose to continue.

Q. You mean that there were certain roads to St. Louis that didn't run to Chicago?

A. Yes.

Q. But that both went into the stock-raising territories?

A. Yes. I want it understood that my testimony does not refer to the Texas traffic.

Q. But all this time the rates from the cattle country were made up by a local charge to Kansas City and such other charge as the lines east of Kansas City elected to make?

A. Yes. Independent action was taken by one of the Chicago lines about the middle of May, 1877, and it (page 29) reinstated over its line the differential of $17.50. I think that was met by an equal reduction to St. Paul that continued for a short time.

The subject not only as to live stock, but as to other large items of freight was under consideration from time to time until February 2, 1878,

at which time there was a disagreement, and the effort for the time being to divide the business was abandoned.

218 Q. Well, now, were you present at meetings?

A. Yes, sir; I was the secretary of the earlier meetings myself.

Q. Were those differentials that existed from time to time arrived at by a calculation as to what was a fair compensation for the service to the two places?

Mr. DAY. I would like to interpose an objection to that.

The COURT. The time is short——

Mr. BETHEA. Yes, your honor, the time is short, and for that reason we want material testimony. They are pretending to give some rates, simply putting a railroad employe on the stand and allowing him to give his guess and recollection.

The COURT. He may state as asked, whether what fixed the rates at any time.

(Objected to by petitioner. Objection overruled. To which ruling, petitioner then and there excepted.)

A. The only consideration was what differential would send half the business to Chicago and half to St. Louis; it was a struggle between the railroads; that was all.

Q. Had there been rate wars before this?

(Page 30.)

(Objected to by petitioner. Objection overruled. To which ruling, petitioner then and there excepted.

A. Yes, sir; frequently. And these were meetings to patch up and fix up these rates—these rate wars—and for no other purpose.

Q. At these meetings was there any consideration of facts, or examination of statements as to the cost of the relative service to the two places?

A. No, sir.

Q. State whether prior to 1894 for a number of years and since that time, say for the last ten years or thereabouts, or more, the service in the hauling live stock to the markets, and especially to Chicago, has increased—that is, has been better, and in what respect.

Mr. COWAN (for petitioner). Objected to as irre'evant and immaterial.

Mr. KELLOGG. That is certainly a material matter, your honor; here is a claim in this case that the $2.00 charge is included in the rate to Chicago, but as a matter of fact that rate, they will admit, has been going down until from Sioux City, from seventy dollars a car it has gone down to $42.30, when, as a matter of fact the service has increased—better time, better cars—the shipper from a long distance is enabled to ship his stock from Sioux City to Chicago without stopping to feed or water. His stock is put in small trains of twenty cars and run through

219 on passenger-train time, while formerly it was put in larger trains and run through on regular freight time.

Now, we desire to show that while the rate has been going down the service has been going up. To the railroads it is more expensive. Certainly with all of this improved service and decrease in the t/me the addition of $2.00, or 8/10 of a cent on a hundredweight, can not be criticised.

COURT. But it is claimed that this terminal rate was already included

in the rate from these points to Chicago. The only object of this testimony must be to show what that service is worth from these points to Chicago.

Mr. KELLOGG. It is important in this: We will show, your honor, by the testimony, by the tariff sheets, that it is not included; we will show that the service has been greatly improved, and that the imposition of an extra charge of $1.05 by the stock yards company, or 80 cents, and $1.05, as in some cases, was not the only reason why a terminal charge should be imposed; we will show that while the entire rates have been going down the service has been improving.

Now, one of the counsel says that this is included in the through rate and that the through rate can not be increased. Another counsel says another thing.

Mr. BETHEA. It seems to me, your honor, there are but two questions involved in this case: One is, was this $2.00 included in the rate before 1894? Now, upon that issue, how can the answer to that help the court? Well, then, the other issue is, whether this charge of $2.00 is reasonable or unreasonable? and that won't help the court. As to whether you gentlemen have been furnished better facilities all the time is another question.

Mr. KELLOGG. Are you, counsel, willing to stipulate that those are the only two questions in this case?

COURT. If it is a question whether the $2.00 is reasonable or unreasonable, that simplifies it to my mind; but if it is a question whether if the freight from here to Kansas City, we will say, would be reasonable if an additional dollar was added to it—that is the commission claimed, as I understand—that if this freight rate included the delivery at the stock yards—that is, the terminal—of the city of Chicago, and that any extra charge made for getting to the stock yards was not permissable, therefore that it must be included in one rate from Kansas City to Chicago, and that it was not worth a dollar more than the flat rate to deliver it to the city of Chicago—now, if that is the case, you have got to show what it is worth.

Mr. BETHEA. I don't understand there is any such claim as that, as to whether $2.00 has been charged or not. It is not a question
220 whether that was reasonable if it has been charged before. The only question of reasonableness is as to whether here in Chicago a charge of $2.00 is reasonable. Then the other question is, whether they have really charged it before in their flat rate. Now, if they have, it don't make any difference whether that was reasonable or unreasonable. I don't think any evidence was taken on that point. I don't think the court was asked to investigate the reasonableness or unreasonableness from Chicago to points West.

COURT. Now, what was the point; what do you understand to be the issue?

A. I have stated the two points.

Mr. COWAN. I would like for the court to turn to page 555d. It is near to the last. Now reading from—going back to page 555c. I think by taking a little time right here we will simplify this matter. Speaking of the previous finding of the Commission: "That finding," referring

to a finding in regard to the $2.00 rate, "must, however, be read in connection with the other facts in the case and the conclusion of the Commission that the imposition of this terminal charge is unreasonable. The defendants say that it was admitted that this charge was reasonable 'provided any charge could be legally made for the terminal service.' The intimation of the Commission was, as indicated in the above extract from the record, 'that if this charge was proper to be imposed it was a reasonable charge.' The reason for the conclusion of the Commission is to be found in the distinction between these two statements. What the Commission passed upon finally was not whether a terminal charge of this sort could be legally made—that had been already determined by the courts—but whether this particular charge could be properly imposed under the circumstances of this case. To avoid misapprehension we will restate here the grounds for our decision, and for that purpose we confine attention to this rate as it existed on May 31 and on June 1, 1894."

"May 31st there was in effect a certain rate on live stock from various points to Chicago, and that rate, upon the record in this case, must be taken to be a just and reasonable one. The defendants intimate in their answers that this rate has been forced down until it is too low, and something was said in the proof looking in the same direction. Upon the other hand, the complainants started in to prove that the rate at the time was too high, but, as is found by the case, both these claims were virtually abandoned. There is nothing the record before us to that the rate was other than a right one, and we assume that May 31st the rate in effect was just and reasonable."

"Now, just what did this live-stock rate to Chicago include?
221 The defendants insisted upon the reargument of this case that it covered the transportation of that live stock to the point where, on its way to the Union Stock Yards, it left the tracks of those several defendants, and nothing more. The complainants insisted that that rate covered a delivery of the stock at the stock yards. We are unable to see any ground whatever for the contention of the defendants. As a matter of law the undertaking to transport live stock from one place to another includes a delivery of the stock. Originally live stock brought to Chicago by these defendants upon the Chicago rate must be delivered at any one of four different points. This was necessitated by the actual competitive conditions at that market. The railway companies, for the purpose of avoiding the expense and inconvenience of this kind of delivery, created the present stock yards. It was entirely at their suggestion and entirely for their benefit at the outset. From that time the stock yards were constructed down to June 1, 1894, the various defendants had by arrangement with the Stock Yards Company the right to use of the company for the delivery of this stock at the Union Stock Yards."

Now, then, in the act to regulate commerce, page 1, "The term railroad as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease."

So that the stock yards railroad was there taken under the plain terms of the interstate commerce act. Mr. Bird stated in his opinion that it amounts to a rental.

And the interstate commerce act says in such a case it is to be regarded as a rental. Now, when they published their rates, they published that fact, so that the Interstate Commission was right in holding that the through rate embraced the rate to the Union Stock Yards.

Mr. KELLOGG. Then you mean they could not divide that charge?

Mr. COWAN. Yes; I say so, and the Commission says so.

Mr. KELLOGG. Do you mean you could not divide without deducting it from the general rate?

Mr. COWAN. I mean at the time you added the charge there was in effect a rate that embraced that service.

Mr. KELLOGG. Why can not we show that the rates have been going down and the service been improving, and that it was proper for that reason to impose the rate in order to make it fair?

Mr. COWAN. Because if you go into an examination of that fact you must consider what the Commission had before them.

222 Now, if you go into the question that was before the Interstate Commission, then it will be ascertained that it was meant that this $2.00 was not put on as a part of the through rate. Most of the stock originated on other lines, and the $2.00 was only applied to the parties who delivered the stock at the stock yards, so it was certain that it was not a part of any through rate, and if the through rate needed stiffening, they should simply done so, as they had done before.

"From the time the stock yards were constructed down to June 1, 1894, the various defendants had by arrangement with the Union Stock Yards the right to use the tracks of that company for the delivery of this stock at the Union Stock Yards. By the action of the various carriers that became the only place in Chicago at which live stock could ordinarily be delivered. Whenever a carload of live stock was shipped to Chicago, in the absence of special directions, it was taken to the Union Stock Yards. This was understood both by the carrier and by the shipper. No defendant has any facilities previous to June 1st for delivering live stock in any quantity at any other point than at the Union Stock Yards. Now, in view of the legal liability resting upon the carrier to make a delivery somewhere, in view of the fact that this delivery must be made at the stock yards, and was habitually made there, it seems impossible that the defendants in making this rate from the point of shipment to Chicago did not include in that rate and contemplate as a part of the service covered by that rate a delivery at the Union Stock Yards. It is absurd to say that the Chicago rate paid for the transportation of that stock up to some switch in the field, or in the city, where there was no facility for a delivery, and that the transportation beyond that point was a gratuity. We think and find that the Chicago rate on May 31, 1894, included, as it had included for the last thirty years, a delivery and unloading of the stock at the Union Stock Yards, and that rate, upon the record in this case, was a just and reasonable one."

The COURT. What do you insist is the points of inquiry here?

Mr. COWAN. To determine whether as a matter of fact the rate was embraced within the through rate, in the first place. In the second place, whether the through rates themselves were reasonable. That could only arise if that rate was imposed as a through rate; but it was not—it was only imposed for the roads reaching Chicago only.

Mr. BLTHEA. Has there ever been any other question in this case before?

A. No, sir.

Mr. COWAN. They say this rate was justified because of the cost of the service.

223 At two p. m., all of the first-mentioned parties being present, the hearing was resumed.

The COURT. I want to say that I would like to have you gentlemen get this down to one point.

Mr. DAY. If the court please: At the time of adjournment this question was being discussed somewhat, and for the benefit of the gentlemen who seem not to know what the pleadings state I will invite your honor's attention to that point. This bill was filed for the purpose of asking this court to enforce an order of the Interstate Commerce Commission made in a case on due hearing, where these gentlemen had filed their answers to the petition, voluminous testimony was taken, and after a considerable time the Commission reached a determination, and that determination was this: The bill recites all that I have said about the filing of the petition, the defendants filing answers, and the hearing was had and the testimony taken and the fullest cross-examinations were made, and thereupon the Commission issued an order and issued its report and findings of fact, which are set out as an exhibit, and are now in evidence. I read from the bill.

"And thereupon petitioner shows this honorable court that it has not been made to appear to the said Commission that said defendants, or any or either of them, have ceased and desisted from the violations of law as set forth in said reports and orders of said Commission, but on the contrary thereof the said defendants and each of them, unmindful of their duty and of the decision and determination of said Commission, as stated in its reports and orders as aforesaid, have repeatedly, through their officers, servants, agents, and attorneys, wholly disregarded and set at naught the authority and orders of the said Commission in that regard, and have wilfully and knowingly violated and disobeyed the said order, and have from time of the issuance and service of the said order and notice as hereinbefore set forth wholly neglected and refused, and each of said defendants still neglects and refuses, to comply with the same, to wit, at Chicago, in the State of Illinois, in said district, in this, that the said defendants, nor either of them, have not ceased or desisted from charging, demanding, collecting, and receiving, in addition to their regularly published transportation charges, the sum of two dollars per carload of live stock as compensation for terminal services rendered in making delivery of live stock at the stock yards of the Union Stock Yards and Transit Company in the city of Chicago, State of Illinois, which charge was found and held in and by said report and opinion of said Commission to be unreasonable, unjust, and unlawful, and which said defendants, and each of them, were in and by said order of said Commission

224 directed to cease and desist from charging, demanding, collecting, or receiving, but on the contrary thereof have each and every of them since continued to charge, collect, and receive the sum of two dollars per carload of live stock as compensation for the service aforesaid, which was found to be unreasonable, unjust, and unlawful."

And the Commission asks the court to issue an injunction restraining the defendants from collecting two dollars for that service, and also a prayer for general relief.

The defendants filed their answers, and in substance specifically and generally alleged that the order was an unlawful order. It is, therefore, encumbent upon them to show by evidence in what respect it is unlawful.

The order was predicated upon the report and findings of fact set out in the exhibits here, in which it is found that prior to June 1, 1894, the defendant companies, on the general through rate that prevailed from western and southwestern points to Chicago, performed the service of delivering, as it was their duty to do, live stock at the United Stock Yards; that embraced within the charge for the through service was the charge for the service of delivering at the Union Stock Yards; that for years prior to June 1, 1894, the defendants had turned over to the stock yards company the duty which the law enjoined upon them of unloading the stock from the cars; that the railroad companies paid the Union Stock Yards Company for this service twenty-five cents per car. The Commission found that the terminal services, including the unloading at the Union Stock Yards, was contempleted and embraced within the through charge. That through rate was not disturbed, but on June 1, 1894, the defendants put into effect, combined and put into affect, a rate of two dollars for the service which was already embraced within the through rate, namely, the terminal service. I wish to call the court's attention to this finding of the Commission on page 555 E.

"We think and find that the Chicago rate on May 31, 1894, included, as it had included for the last thirty years, a delivery and unloading of the stock at the Union Stock Yards, and that rate upon the record in this case was a just and reasonable one. June 1, 1894, these defendants, by concerted agreement among themselves, increased this rate two dollars per car. If the rate on May 31st was a just and reasonable one, the rate on June 1st was an unjust and unreasonable one, unless some new conditions justified the imposition of that additional charge. We have found that to the extent of one dollar a new condition did justify the additional charge, for the reason that then for the first time the stock yards company exacted the trackage charge. In other words, the cost of service to
225 the defendants was increased by just one dollar on that day. It must follow, therefore, as a necessary conclusion, that of the increase which the defendant made, one dollar was justifiable and one dollar was unjustifiable. This is not, however, because two dollars is an unreasonable charge for transporting a car to the stock yards, if that service was performed by some independent agency, but because, since the defendants were already receiving compensation for this service, they ought not to charge for it a second time. Of this proposition we have no doubt. Upon the assumption that the rate May 31st was a just one, we regard the imposition of anything above what the defendants were then compelled for the first time to pay as an unwarranted exaction and a violation of the first section of the act to regulate commerce, if it is possible to violate that section."

The defendants then interposed the Walker-Keenan case, and the

Commission showed that they were following the decision in that case. The Commission says:

"The circuit court of appeals says that the carrier may segregate its rate, charging one part to a certain point and another part beyond that point, but there is a wide difference between segregation and addition. What the carriers have done here is to add an arbitrary sum for a service for which they are already receiving a reasonable compensation."

To present this case a little more clearly, let us take what the record here shows of one road, the Chicago & Alton. The Alton's tracks intersect the Union Stock Yards tracks near Brighton. From there the Alton runs its trains of stock right through from its own tracks over the tracks of the Stock Yards Company to the stock yards. For running over the Stock Yards tracks no charge was made prior to June 1, 1894, by the Stock Yards Company. The only change in the condition of the Chicago & Alton since June 1, 1894, to what it was prior to June 1, 1894, was that since June 1, 1894, they have been compelled to pay forty cents a car for going in and forty cents a car for coming out. The Stock Yards Company do not haul its cars, but the Alton hauls its own cars over the tracks of the Stock Yards Company.

The Stock Yards Company varied its charges from forty cents to seventy-five cents, according to the distance which these roads hauled their cars over the Stock Yards Company's tracks. So that the only change that has occurred is the imposition of the trackage charge. The trackage charge was imposed against the Alton and all these defendants on June 1, 1894. The Alton has since then paid forty cents a car in and forty cents a car out, making a total increase in its expenses of eighty cents a car.

The Commission found that its through rate embraced that service
226 prior to June 1, 1894. Its through rate covered all that it could reasonably charge for that service prior to June 1, 1894. After June 1, 1894, its expenses were increased by this trackage charge. The Chicago and Alton and each of these defendants operated their own trains, engines, and crews right through from their own tracks of the Stock Yards Company to the stock yards, and the only burden that has been put upon them in addition is this trackage charge. The twenty-five cents for unloading existed for thirty years prior to June 1, 1894. They simply employed the Stock Yards Company to do that which the law compelled them to do, namely, unloading their cars of live stock.

My objection this morning to the class of testimony that was offered here was made, not so much because I believed the testimony was of any importance, not because I believed it was relevant, but solely because I believed that class of evidence to be irrelevant.

Take the first section of the act regulating commerce: "The term railroad, as used in this act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and the term 'transportation' shall include all instrumentalities of shipment or carriage."

So that under that paragraph of section one these stock yards tracks were pro hoc vice the tracks of each individual defendant in this case. Each individual defendant operated its trains over these tracks just as it operated its trains over the St. Louis Bridge. The St. Louis Bridge isn't a common carrier within the meaning of this act; but these defendants pay a

terminal charge of four dollars for each car they operate over that bridge, and, as Mr. Bowers stated, that this forty cents trackage which the Chicago & Alton paid was a rental, and it therefore made the stock yards tracks, for the purpose of the business that was to be conducted over it, the road of the Chicago and Alton down to the stock yards themselves, down to the chutes, and there they employed the Stock Yards Company for the first time to unload their cars, and for which they paid that company twenty-five cents both before and after June 1, 1894.

Section six of the act to regulate commerce reads:

"That every common carrier subject to the provisions of this act shall print and keep open to public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its route. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will
227 be carried, and shall contain a classification of freight in force, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or aggregate of such aforesaid rates and fares and charges.

"Such schedules shall be plainly printed in large type, and copies for the use of the public shall be posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected."

It was found here that down to June 1, 1894, the Union Stock Yards was Chicago for the purpose of delivering cattle, and for the service of carrying cattle from its point of origin, whether from the plains of Kansas, the plains of Texas, or Missouri River points, and embraced the service to the stock yards, including the service of unloading. If it didn't under section six it was their duty to have put it in their tariffs. They didn't put it in until June 1, 1894, for the reason that the service embraced, as the Commission found, the service of delivering to the Union Stock Yards, which was their depot, their terminal for the delivery of cattle.

Section six further provided: "Every common carrier subject to the provisions of this act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify such Commission of all changes made in the same. Every such common carrier shall also file with the said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs or rates of fares or charges for such continuous lines or routes, copies of such joint tariffs shall also in like manner be filed with said Com'n."

It also provides they shall have established and published its rates; that it shall be unlawful "for any common carrier to demand, collect, or receive a greater or less compensation for the transportation of persons

or property or for any service in connection therewith between any points as to which a joint fare or charge is named thereon than is specified in the schedule filed with the Commission in force at the time."

It also provides that "No advance shall be made in joint rates, fares, charges, shown upon joint tariffs, except after ten days' notice
228 to the Commission, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the increased rates, fares, or charges will go into effect. No reduction shall be made in joint rates, fares, and charges except after three days' notice to be given to the Commission as is above provided in the case of an advance of joint rates."

So it comes to this. The law provides what shall be a lawful rate. Since 1887 the only way that a lawful rate can be established is to file it with the Commission, and it shall be in print and in large type, and the law makes it a penal offence for any deviation from that—makes it unlawful; prohibits it. It is not a rate. And so when Mr. Bird or any other witness undertakes to impeach the finding of the Commission which has the documentary evidence before it which it analyzed, going through the entire period from 1887 down to the time it rendered its decision, and it found the facts from the tariffs filed by each of these defendants in this case, and when Mr. Bird says that these rates have been reduced from time to time I say that is no evidence; that it is irrelevant. Mr. Bird may believe it, but let him produce the tariff or say when it was. I don't ask him to bring the books in here, but let him point out what rate was reduced. We have filed tariffs in here that were filed with the Interstate Commerce Commission from the points that are embraced in this controversy.

On the question of this one dollar terminal charge a great deal was said on the argument of the demurrer. It was then stated that that was an intimation thrown out by the Commission, endeavoring to follow the precedent which they believed was possibly involved in the Walker-Keenan case. The Commission said: "As you, the Chicago and Alton Railroad, since June 1, 1894, performed no service whatever in respect to this stock that you did not perform before, you are under no disability whatever, bearing no burden whatever that you did not bear before excepting this trackage charge of forty cents in and forty cents out; therefore your two-dollar terminal charge is unlawful; but the Commission intimated that so far as it was concerned they would not interfere with a one-dollar charge on account of the charge imposed by the Stock Yards Company, although according to the evidence eighty cents is as much as the Chicago and Alton had any right to put on. That is substantially the case made by the Commission.

Following the statute, they now invoke the aid of this court to enjoin the defendants, who, under the pretext of an increased cost to them of eighty cents, have put on a two-dollar charge, and they ask you to enjoin the collection of that two-dollar charge. The question was argued on the demurrer. It arose several times,
229 whether this court had power to state what the rate should be. That is a question which your honor will have to determine. The Commission said that they didn't have the power under the decision of the Supreme Court, but they did have a right to say what they believed

would be a reasonable charge in view of the changed condition. But they said, We do have the power under the decisions to denounce this two-dollar rate, and we can keep on denouncing it down to the point where this court or a court of equity will say that it is a just and reasonable rate.

I think I have answered your honor's question as to the issue presented by the Commission, and it is simply that this two-dollar rate, whether or not it be unjust and unreasonable of itself, it unjustly and unreasonably increases the through rate, and that the railroads have already charged for all the service involved in the delivering of cattle into the stock yards, excepting for the actual trackage.

The COURT. You claim that there is a fixed rate from these outside points to Chicago which involves their delivering this stock at the stock yards and unloading it at their own expense?

Mr. DAY. Yes, sir.

The COURT. That when a certain trackage charge was imposed upon them by the stock yards company they took advantage of that raise of eighty cents, in one case, to make a charge of two dollars, and that that act is illegal?

Mr. DAY. Yes, sir.

By Mr. BOWERS. If your honor please: Sometimes the shortest way to the end of a lawsuit is just such little discussion of certain fundamental features at the start, and I trust your honor will pardon me in a very brief exposition of our views of the particular question that Judge Day has now put forward. They are by no means all of the case, but they are a part, and a part to which we are glad to direct our attention to. I want to take here and answer, though there are a great many other things to be answered, the position of the Commission as shown from what Judge Day has read. It will be found to be, if there is any argument on their side, the only argument they have, and it has, we believe, a conclusive answer. They say this: On May 31st, 1894, the defendant railroads charged a certain rate to Chicago. We will take a particular case so as to be as clear as possible. We will suppose a shipment of a carload of live stock from Omaha to Chicago, and, while I do not know the rate, we will suppose on May 31st, 1894, the charge for that transportation was fifty dollars a car. The Commission says that for that charge of fifty dollars the railroads were doing the service not
230 only of hauling to Chicago to the end of its own line where it connected with the stock yards tracks, but were also doing for that total of fifty dollars the further service of hauling this car of stock over the stock yard tracks to the stock yards. That is true. Let it be, at any rate, admitted for the sake of argument that the Commission is right; that for that fifty dollars the railroads, on May 31st, 1894, according to their tariffs then existing, were doing the entire service, including hauling to the stock yards. Assume that for the purpose of this present argument. On June 1, 1894, the railroad company puts in an additional two-dollar charge, which is plus the former rate. The Commission says in the first place this: Because you were charging only fifty dollars on May 31, 1894, for hauling that car from Omaha to the stock yards it is wrong for you to charge fifty-two dollars on June 1, 1894, for the same service. That is the first thing the Commission says and that Judge Day

repeats. Let us see how much there is in that, and how true that is, and how satisfactory it will be to this court. There will be other things to say afterwards. That assumes, your honor, and necessarily rests upon the idea that the rate to Chicago on May 31st, 1894, of fifty dollars was every penny that the road could legitimately charge for that service. In other words, it assumes that the fifty dollars is as high as would be a reasonable rate on that car from Omaha to the stock yards. That is pure assumption. Let us look at it a minute. Because the rate happened on May 31st, 1894, to be fifty dollars the Commission says that that must be taken to have been every penny that the service cost and every penny of profit that the road could properly charge. I want to call attention to that feature. The conclusion that the fifty-two dollars for this same service was wrong rests upon the assumption that the charge of fifty dollars for the service is every penny that is fair. Was that rate, your honor, that was in force on May 31st, 1894, any more proof of the actual cost of that service or of the proper amount of charge for that service than any one of the twenty fluctuating rates that have been in force in the last fifteen years on that same transportation of the car from Omaha to the stock yards? It is against common sense to urge any such proposition, for your honor knows just as well as Mr. Bird, who has spent his life in the railroad service, that railroad rates go up and down, being one thing one month and another thing the next month; and, further, your honor knows just as well as Mr. Bird that no man who ever was born can calculate the exact amount of charge that is exactly and fitly adjusted to the service of hauling a car of live stock from Omaha to Chicago.

The COURT. Isn't this the point in this case? Why, if the
231 expence of hauling had increased, should that all be placed on this terminal charge—this stock yards charge?

Mr. BOWERS. I am coming to that, but I wanted to be as complete as I could. I wanted to take all there is in this matter. There is the first proposition. It can not be said that the fifty-two dollars is wrong, unless the fifty dollars is right.

The COURT. It is not the fifty dollars. It is the fifty dollars for rate and the two dollars terminal charge.

Mr. BOWERS. Yes. In the case I supposed, I just took an illustrative case. Now, first, I want to show that their argument is that because we charge fifty dollars on May 31st for hauling way to the stock yards we couldn't after that ever charge more. That rests necessarily on the assumption that the fifty dollars is just right; is all that rightfully could be charged. In other words, that is the top notch, the highest point to which a reasonable charge could go, and that is so because at that particular day they happened to be just fifty dollars, and takes no account of the fact that for twenty years those rates had been steadily going down on the whole, one month fluctuating upwards and the next down, but with a steady drift downwards. No man with an ordinary amount of common sense, in the face of these fluctuating rates, as all railroads are, can take a rate that happens to be in existence on a particular day and say that is the top notch or charge that may fairly be imposed for a service. Not only that, but if we turn aside to another consideration. If we were every one of us here with a dollar of interest in either side of this controversy, and if we had spent all our lives in railroading,

should sit down in a quiet, calm, judicial gathering, with the purpose of estimating just whether that cost of carrying a car of live stock from Omaha to Chicago is fifty dollars, or sixty dollars, or fifty-five dollars, what conclusion would anyone think that body would come to? It would come to the conclusion, if it had any self-appreciation, any conception of the limitations upon our mind power, and any conception of the difficulties and complexity of the problem, that no man in the world could possibly approximate the actual cost of that service within any reasonable sum—dollars might be the margin. Here the rate in question is one cent per hundredweight.

The COURT. I don't think that is what they are getting at. Here is a railroad, say six hundred miles long; here is a piece of railroad three or five or ten miles, whichever it may be, in Chicago. You are insisting that the rate from here to Omaha is a fluctuating rate and impossible for the
232 Commissioners to say positively whether it is too much or too little, at least, it would be a matter very difficult of ascertainment. But aren't you obliged, if it is true that you deliver at the Union Stock Yards—aren't you obliged to put in a mileage rate so that you charge all the increase in the per mileage rate, and not all on this short spur that leads to the stock yards? And if the rate isn't fair you should make it a flat rate all along the line to the terminal point. If you have to pay eighty cents, there is a dollar and twenty cents that you are putting in on this piece of road, when it is already, according to their theory—when you have already charged the same rate per mile on your rate from Omaha to Chicago. In other words, isn't it coming down to this point, whether you are not bound to make the stock yards your terminal point?

Mr. BOWERS. Your honor says this: Assume that the fifty-two dollar rate is right, mustn't you proportion it proratably all along the different parts of the service instead of putting too much on the terminal service? It was decided in the court of appeals that the railroads were not obliged to make one entire single charge for the entire service of receiving freight, transporting it, and delivering it; that, on the contrary, a railroad company is entitled to segregate the terminal charge from the transportation charge. That is true even of the carriage on a railroad company's own line of road, even if the shipment does not go off the line of its own road. That is true both under the court of appeals' decision and under section six of the interstate-commerce act, which Judge Day read, and says: "The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain a classification of freight in force, and shall also state separately the terminal charges, and any rules or regulations which in any wise change, affect, or determine any part or aggregate of such aforesaid rates and fares and charges."

So that the act specifically refers to the separate charge being made for a terminal charge, and the court of appeals held that we had a right to divide our charge. We have this proposition here. We are supposing that fifty-two dollars is right. We do separate it. We put two dollars on the terminal service as a terminal charge. That would leave the balance of fifty dollars as a transportation charge to the point where the terminal charge begins. I admit your honor's proposition that the increase in the rate ought to be put on the right part of the service. In other

words, the charge ought to be put where it belongs. The only way, however, of prorating the total charge between the different parts of the service would, as nearly as you could, and as human judgment makes it
233 possible, put on each part of the service the part of the charge that that service costs. But no human mind can suggest any other rational basis for dividing the entire charge for the total transportation service, except that for those parts of the service for which you make a separate charge you shall put on what that service costs—for that part of the service for which you put on a separate charge you shall put on what that costs. That is what we have done. And that is the point in the Commission's findings which can not be got around by these gentlemen. The Commission finds that it actually costs (it is not talking about profit) each one of these defendant companies at least two dollars, some of them admittedly more; it actually costs each one of these companies at least two dollars to perform this service. If we had the right to divide the total charge for hauling from Omaha to the stock yards in two parts and put on a separate charge for these separate parts of the service, as the court of appeals and as the Interstate Commerce Commission declare, how can it be said that we didn't divide the charge properly, at least in the face of these gentlemen here who are contesting the terminal charge, when we didn't put on more for the terminal service than the actual cost of such service?

In other words, I suggest that that exactly answers your honor's inquiry. We admit there should be a proper distribution of the charge, but that proper distribution is shown to exist, because we have not put on a charge for the terminal service more than the service actually costs.

The COURT. It looks to me, if their proposition is true, that the fifty dollars formerly covered all the terminal charges except the trackage. If that is true that it did, has the Commission the right to inquire into the amount per mile—the relative amount per mile you were charging for the transfer service here and compare it with the whole rate?

Mr. BOWERS. The Commission has no right to say that we shall proportion our charge when we divide our charge—to say that we shall proportion our charge so as to distribute to any separate service that is charged for less than the cost of that service. Nobody could have that right. Certainly if we are entitled to divide our charge, it is proper to so pro rate it as to make each service pay for itself.

I want to come to another proposition, if I may do it without trespassing on your honor's patience, because this is important.

The COURT. Let me ask another question: Suppose the Northwestern were to arbitrarily say, "We will have to charge double the freight per mile on our road from Milwaukee to Chicago, or from, if you please,
234 Jefferson Junction to Chicago, or Waukegan to Chicago, because it is a terminal rate; there are no more stops or much more interference." The question is, whether it is not within the power of the Commission to inquire into that piece of road and say that is an unreasonable charge.

Mr. BOWERS. It is within the power of the Commission to inquire as to whether this two-dollar charge is an unreasonable charge. We say that they have not made out that it is unreasonable; that they have made out as a result of the inquiry the exact contrary, because they have not shown in the first place that the addition to the total rate in the case I have sup-

posed from Omaha to the stock yards, changing the rate from fifty to fifty-two dollars, isn't one the company had a right to make, because that service cost sixty dollars instead of fifty-two dollars; because the day before there happened to be a charge of fifty dollars isn't evidence that can satisfy your honor that it didn't cost fifty-two dollars.

The COURT. To meet your proposition: Your rate to Chicago is fifty dollars. For this last piece of road, which we assume is your own road, you charge twice; that is to say, you formerly delivered at the same point for your regular rate, and now you charge two dollars for a haul over the same piece of track that is included in your regular rate.

Mr. BOWERS. We will suppose now that I am wrong in what I have been arguing; that there is nothing in the fact that there was a fifty-dollar rate one day, and that because of that fact it could not be fifty-two dollars another day. We will suppose I am wrong on that. We will suppose that the rate ought to remain fifty dollars on June 1, 1894, for the purpose of this argument——

The COURT. I understand. If your road had charged fifty-two dollars from Omaha to Chicago, the inquiry, if it were made at all, would have to proceed on an entirely different basis from what it does, because that would have been spread along your entire road.

Mr. BOWERS. But how spread? We certainly would be entitled to divide it. Now, when we came to divide the charge from hauling from Omaha to the stock yards, isn't it certainly true that we were entitled to make the separate charge for the separate service (of getting into the stock yards) such an amount as did not exceed the cost of that separate service?

The COURT. Have you the circular that made the charge?

Mr. BOWERS. We will put that in evidence. I will read the Atchison circular that was used in the Keenan case: "Taking effect June 1, 1894, tariffs on live stock and all other traffic received from or delivered to the stock yards, or industries located on the tracks of the Union Stock Yards Railway, the Indiana State Line Railway, and the Northern Indiana Railway, will, in addition to the rates named to or from Chicago, be subject to a terminal charge of two dollars a car." That is the tariff that all of the roads used, and it shows that at this time companies began the system of dividing the total transportation charge, into what is a fair intermediate charge for the service, and made a separate charge for the separate terminal service, as they had a right to do. That charge, your honor, which the companies might make for the terminal service couldn't properly be put on a mileage basis all along the line from Omaha to the stock yards in the case I supposed. On the contrary, for obvious reasons, no part of the service of hauling the stock from Omaha, St. Louis, or Kansas City to the stock yards is as expensive per mile as this terminal service is for reasons you will appreciate. All the way from Omaha to the outskirts of Chicago the right of way cost ten dollars an acre, and here in Chicago where the terminal service is performed the right of way costs thousands of dollars per acre. Out in the country the service is of a very simple character from a railroad standpoint. There aren't the dangers of collisions, accidents, etc. Here in this great big hubbub of Chicago the right of way is crowded, the danger from collisions is great, the safety appliances that have to be used are very expensive, and it is therefore plain to be seen that there is no comparison between the risk

of handling a train from Chicago to the stock yards and of handling it out in the country.

Now, will your honor say, or, if the Commission had tried to do it, would it say, when this charge is to be divided that no more charge should be put per mile on the terminal service in Chicago than is put per mile on the service in Iowa? That would have the result of putting into the Iowa part of the service a charge much more than what the service cost, and a part of this terminal service. And I submit, therefore, that when it comes to dividing any railroad rate as to separate a charge for ordinary transportation from the terminal service, the only rule of division that any court could sustain would be to charge according to the cost of the service, and to make each part pay what it costs.

Now I want to come to your honor's last inquiry, and I am indebted to your honor for making it. I am going to suppose that I am all wrong in what I have said thus far. Suppose from June 1, 1894, to the present time we ought to have the same charge as had on May 31st, 1894, for hauling live stock to the stock yards, still it would be true that we could proportion the fifty-dollar charge. We could put a part of it on transportation to Chicago, and another part of it on the terminal work. Suppose we did that, we certainly could divide that fifty dollars this way.

We could put two dollars on terminal work and forty-eight dol-
236 lars on the rate to Chicago, if fifty dollars ought to be the rate, just because one day it happened to be, we still could make the terminal charge of two dollars, if that didn't exceed the cost of the terminal service, and we could make the flat rate to Chicago forty-eight dollars, because that wouldn't be making a charge to Chicago any more than the fifty-dollar rate and the terminal charge wouldn't be any more than what it cost. Now it follows, mathematically, that even if we had to adhere to the fifty dollars only, we could divide and charge two dollars for the terminal service and forty-eight dollars for the rest of the service, and as a result the two-dollar charge is clearly justified, because it is no more than the cost of the service; and the only difference here is that we charged fifty dollars for the service up to the connecting point instead of forty-eight.

The COURT. In other words, you claim that your position is just the same as though before this action had taken place you had increased the rate to fifty-two dollars?

Mr. BOWERS. That's it. If fifty-two dollars is a right total—that is, if I am right in saying that fifty-two dollars is a proper total—then it was all right for us to do what we did, namely, put two dollars on the terminal service and fifty dollars for the rest, because that makes fifty-two dollars, which we now assume is not too high a total. But I want to assume that even the $52 is too much, and that we never ought to charge more than fifty dollars, still we would have the right to proportion it with the result that we could charge two dollars for the terminal service. Nobody will deny that if we can prorate at all, because if we can proportion we have a right to charge for the terminal service not more than it costs. That is what we would be doing. That would leave forty-eight dollars for the other part of the rate, and the result is that if we charged too much in charging fifty dollars for that other part of the rate instead of forty-eight, the part of the rate that is unreasonable,

if any part is, isn't the terminal service, but the flat rate up to Chicago, which is not what these gentlemen are contending.

I am not going into the figures. Mr. Hansen suggests that it costs much more than the two dollars. So it does. It costs our road over three dollars on every car of live stock. And why is it that the North-Western road is earnest in this transaction? Because the North-Western road brings seventy thousand cars of live stock per annum into the Union Stock Yards in Chicago. It is admitted by the Commission's own findings that it costs the North-Western Company $3.34 for the terminal service, and the Commission asks the North-Western Company to do it for one dollar in spite of that cost. That is the Commission's position; that is, that the North-Western Company must lose
237 three dollars and thirty-four cents per car on every car of that seventy thousand carloads per annum for the privilege of serving the public.

The COURT. Let me ask if you did segregate your charges, when, by your schedule, you said there should be an additional charge of two dollars, and leaving the old rate as it was?

Mr. BOWERS. Yes, that is the very question before the court of appeals. This is in the Alton case. And we are going to put in before your honor the record before the court of appeals in order that your honor may see exactly the situation presented to that court.

The COURT. Here is a point I want to make. In fixing your terminal charge, did you not leave the old rate in operation up to the terminal which they say is the stock yards, and then on top of that, without removing that old rate, put on top of it this two dollars?

Mr. BOWERS. I have two answers to that. In the first place, we did not, and in the second place, it was impossible to suppose that we did in view of the finding of the Commission or of the court of appeals. Suppose that the two dollars was put in not separately for that terminal service on top of the Chicago rate, which was already supposed to be a charge to the stock yards. Mr. Cowan's position would be right if we had made one charge for a service way to the stock yards, then we would be under obligations legally to carry to the stock yards for that one charge already laid, namely, the flat Chicago rate, because having agreed to carry way to the stock yards for that one charge we couldn't put on a two-dollar charge for a service we had agreed to do without that charge. There is the first proposition. The position of the court of appeals, the position of this Commission, that we are entitled to put on a two-dollar charge necessarily involves the decision that the flat Chicago rate isn't a charge to the stock yards; is rather a charge merely to the point of junction of connection between the defendant's companies own lines and the stock yards company's line, because if that flat Chicago rate, after this tariff of June 1, 1894, were a service to the stock yards we couldn't put in a penny additional. The court of appeals says we could. The Commission says we can. The tariff here which I have just read, that on and after June 1, 1894, there will be put on a charge of two dollars for carrying to the stock yards necessarily means, since because affirming one thing is denying the opposite, saying we would charge two dollars for carrying to the stock yards is saying at the same time that we wouldn't carry to the stock yards without being paid to the stock yards.

238 The COURT. I understand the schedule to state, "terminal charges."

Mr. BOWERS. But we say that on June 1, 1894, a charge will be made of two dollars in addition to the flat Chicago rate. Now, by saying that we should exact that two dollars for going to the stock yards, is saying that we wouldn't carry to the stock yards without that two dollars, which is the same thing as saying that for the flat rate to Chicago, without that two dollars, we wouldn't carry to the stock yards.

Now, I turn to my last proposition. I submit that it appears mathematically that if our rate after June 1, 1894, as a total, clear from Omaha or any other shipping point to the stock yards, were too high, the part that is too high isn't the two dollars that is imposed for the terminal service, but the preceding flat rate to Chicago. That is because the two-dollar rate is shown not to exceed the cost, and if, therefore, the total is too high it must be that the flat rate to Chicago exceeds the cost and is too high. That is not what this complaint is directed against. That is not what this Commission ruled about, and in the end that is the proposition that is going to beat these complainants before your honor. And why? Not only because that preceding flat rate is wrong (and that is not the subject of the complaint here, and not the subject of the Commisson's order), but if it be wrong, it is a rate in a large part of this business of hauling live stock to Chicago a joint rate of two or more connecting carriers. For instance, the North-Western will get live stock from the Union Pacific away from Wyoming or Colorado. Now, if the flat rate is too high that ought to be ordered down itself, so that the Union Pacific Company and the North-Western Company, which share in that rate, would both share a proportion of the reduction. It will not do, if the flat rate is too high, to say to the shipper or consignee, we will balance that for you by leaving it alone, though it is too high, and ordering down the terminal charge in Chicago to balance, because the terminal service is all done in Chicago by the North-Western road, charged for by the North-Western road, received by the North-Western, and goes only into the treasury of the North-Western. Now, if the preceding flat rate to Chicago is too high, it ought to be ordered down itself in order that the Union Pacific and North-Western companies should share the proper reduction. It wouldn't be right to allow the Union Pacific Company to go on getting its share of the too large Chicago flat rate, and making it up to the shipper out of the treasury of the North-Western road.

Not only that, but it is reinforced by this final consideration, that
239 the Commission has dismissed out of this case all the connecting carriers which share in the Chicago flat rate, leaving it a case against the defendants who run directly into Chicago—doing that because they thought the terminal charge was the only charge that was wrong.

I will read from page 555 H of the opinion of the Commission:

"The defendants contend that the terminal charge is a reasonable one." That is all right "and that if any part is wrong it is the charge for transportation from the point of origin to the point in Chicago where the cars leave their tracks." That is, to go onto the stock yards tracks. "Abstractly this may be true." I would like to stop here to ask the court what "abstractly" means in that connection. This is not a question of law. It is a question of mathematics. I have shown this prop-

osition that if our charge ought to be in the case I have supposed fifty dollars, and we have divided it into two dollars for the terminal charge and forty-eight dollars for the flat rate, that would be held to be good, because two dollars wouldn't be more than the terminal service costs, so that in that supposed case our rate ought to stand for terminal charge $2, $48 for flat rate, and instead of that we have made the flat rate $50 and two dollars for the terminal charge. It must be the flat rate that is wrong, because the Commission has proved that the terminal charge is right, and that is what Commissioner Prouty means. Continuing, "Abstractly this may be true, but in dealing with these transportation problems the purpose is to reach practical justice. The Chicago rate is so much per hundred pounds, and would vary with the number of pounds contained in each car. This terminal charge is a definite amount per car. It would therefore be impossible to exactly offset the terminal charge by any corresponding reduction in the rate per hundred pounds." Not impossible, but difficult, because you would have to make the adjustment right for each rate from different places. "The terminal carrier at Chicago, as the case shows, receives and retains the entire amount of this terminal charge."

That is true, and it is the fact that the terminal carrier at Chicago does all the terminal work, and therefore properly gets all the terminal pay. Because the flat Chicago rate is wrong the Commission has no right to balance that by taking the whole terminal rate out of the treasury of the Chicago and North-Western Railroad. The law doesn't do things in that way. The Commission has found here that if anything is wrong it is the flat rate to Chicago, and I further show if that is wrong it ought to be ordered down, and that is no reason for ordering down the terminal charge, which the Commission has found not to exceed the cost of the service, and is therefore found to be right.

240 Mr. DAY. The Commission specifically found, notwithstanding Mr. Bowers' statement of its findings, it did find that the Chicago rate on May 31, 1894, included, as it had included for the last thirty years, a delivery and unloading of the stock at the Union Stock Yards.

The COURT. You are speaking to this point, that the rate charged contemplated a run to the terminal or stock yards, and this was put on top of it, this terminal charge, making a double charge for the same piece of service. This is the case Mr. Bowers says is covered by the court of appeals opinion.

Mr. BOWERS. Because if that charge, the flat Chicago rate, did cover the services to the stock yards after we put in this new form of tariff, segregating the charges, then I want to have Judge Day tell us how any two-dollar charge, or one-dollar charge, or even a cent, could be made as a terminal charge for this same service of going to the stock yards; if we had already made a charge, how we could charge a second time.

Mr. DAY. I stand on the order of the Commission. Mr. Cowan goes a step further and says that as it is your duty under the Covington Stock Yards case to furnish the facilities, to have the stock yards, and all that is necessary for the delivery and unloading of stock, you couldn't put that on as a terminal charge by farming it out to some other corporation.

The record shows that the railroads that entered Chicago in '65 owned these stock yards. This included a portion of the defendants in this case.

Mr. GORMAN. That is not true.

The COURT. That is assumed that the stock yards is the terminus of the railroads. That will simpl'y this matter. The question I want to get at is, whether our inquiry can not be limited as to an inquiry on the terminal charge, and not as to the general value of the charge or which amount should be charged from outside points.

Mr. DAY. So far as the court of appeals decision is concerned to the application of this case, the gentleman raised that on the demurrer to the bill, and it was argued for nearly three days, and it was determined that it did not apply. All that the court of appeals decided was this, that the railroads had the right to segregate their charges. They could take a charge that was fifty dollars and they could divide it up and put two dollars on for terminal service and forty-eight dollars for the through rate, or they could make it all in one charge. The question there was, whether they could divide their rate.

Mr. BOWERS. How, unless the court of appeals held that after June 1, 1894, when this new tariff went into effect, the flat rate
241 to Chicago was not laid by the railroads as a charge for carrying way to the stock yards; how, unless the court held that the rate to Chicago was not a charge for going clear to the stock yards, could the court have held that the railroads were entitled to make a two-dollar charge for this stock-yards service?

Mr. DAY. The court of appeals didn't decide that. The court of appeals said as to the reasonableness of the rate they did not go into.

Mr. BOWERS. We admit that the court didn't adjudge what would be the proper amount of the charge, having no evidence before them as to the cost of the service, but the very application of Mr. Keenan to the court was that the court order its receivers to deliver this stock at the stock yards without the payment of anything but the flat rate, and that was the application that the court of appeals denied, holding that, in the absence of proof, the amount of charge for the terminal service was not too much, and allowed the road to put in a two-dollar additional charge for terminal service, because the flat rate didn't embrace that service.

Mr. DAY. Yes; they decided that you might segregate your rate, and, because they decided that, you took a trackage charge of forty cents as a pretext to put on a charge of two dollars a car on every car that was brought in, without any additional reason or change in the situation, except the eighty cents imposed by the Stock Yards Company. The record shows that these roads that come into Chicago by way of St. Louis pay a four-dollar trackage charge on cattle coming across the St. Louis bridge. They may add that to the through rate, although it is now paid for in the through rate. They may add that, and they will increase the rate to six dollars. They may go back to Kansas City, where there is another dollar-and-a-half terminal charge, which the railroads embrace in the through rate, and they will increase by way of segregation the through rate from Kansas City to Chicago about eight dollars. In the fixing of rates it is a universal rule that the roads forming a continuous line, connecting with each other, agree among themselves on a through

rate, each taking its proportion of the through rate. Each terminal line gets a larger mileage, because of its furnishing the terminal facilities, than the intermediate lines, that furnish no terminal facilities; and your honor's question to Mr. Bowers was a pertinent one. Why, if the through rate from Kansas City is too low, why is not the increase spread out over the lines between here and Kansas City? When it is made up of two lines like the Illinois Central and the Missouri Pacific, the Missouri Pacific takes care and bears the terminal expenses at Chicago, and it is its duty to do it, because under the law it is its duty to make delivery there, and because under the law it is the duty of the Missouri
242 Pacific to load cattle at Kansas City. If your honor would permit such a segregation as Mr. Bowers asks for, they have the right to increase the rate arbitrarily. They can make terminal facilities that will cost an astounding amount and make that a pretext for increasing the rate.

The COURT. If the North-Western road had made the charge by their new schedule, fifty-two dollars from Kansas City to Chicago, and we find that the terminal charge in Chicago actually cost us three dollars and thirty cents, and they call it two dollars, the supposition you make, I think, is barred by your report, where you say you find it actually cost them three dollars and thirty cents, and if that is what it actually cost them, they can not run it up to any viciously high figure as long as they keep within the three dollars and thirty cents which it actually cost them. The question is whether they were obliged to carry to the stock yards; second, whether by their new schedule they segregated not their charges, but segregated their mileage; one charge is made to Chicago, and another charge is to the stock yards. There, it seems to me, the matter will hinge, because it is not within the power of the Commission to say that a thing which costs the railroad three dollars and thirty cents and for which they charge two dollars is exorbitant.

Mr. BETHEA. But they must adjust their charges according to the lowest charge, according to the laws of competition, and if the charge to the Alton is only eighty cents, all the railroads, according to the laws of competition, must charge but eighty cents. When I first looked at this proposition, it looked to me unreasonable that the North-Western, to which the actual cost was three dollars, would not have a right to charge two dollars, but when you appreciate the proposition that competition controls these people, and that they have no right to charge any more than the cheapest is charged, then it all looks easy and simple.

Mr. BOWERS. I never knew yet that it was true in law that the law would require one railroad to do things for less than it cost that road, in order to compete with another. I never knew that if the Alton had a short line from Chicago to St. Louis and could do a certain service for one hundred dollars, and the Wabash had a long line which would cost them two hundred dollars, that the law would require the Wabash to go into the service on the same basis as the Alton. But that doesn't make any difference here. I assert that the Commission has found that the actual cost to each of these defendant companies of doing this work—of getting these cars of live stock from their connection to the stock yards—was at least two dollars.

Mr. DAY. They didn't find that.

243 Mr. BOWERS. On page 555c of the rehearing opinion they found it. We contended that they had not made any express finding on that in their first opinion, and that they ought to do it because it was important. At the end of the paragraph the Commission said:

"To remove all doubt upon that subject, however, if it is not clearly found already, as we thought it had been, we now find that looking entirely to the cost of the service, and including as a part of that cost the trackage charge paid the stock yards company and the unloading charge paid the same company, the amount of this terminal, if under the circumstances of this case it is proper to impose such a charge, is reasonable."

The COURT. The unloading was in before.

Mr. BOWERS. But I am assuming that these were going not to the stock yards, but anywhere on our line. According to the finding of the Commission we can make a separate terminal charge for the separate terminal service. What is the terminal service on a car of live stock whether delivered at the stock yards or on our own line anywhere from Chicago to Omaha? The terminal service includes the unloading of the stock, and here we have made a separate charge of two dollars for the entire terminal service, and on page 555c the Commission says that that does not exceed the cost, but they didn't think, for other reasons, that we ought to charge as much as the cost.

Mr. DAY. We will get back to the point. In this case the Commissioners found as a matter of fact—and where we now stand it has not yet been disputed—that all of the service which these defendants performed at Chicago in regard to cattle was paid for, covered, and included in the through rate, and it says you shall not twice charge for the same service, and when you claim to be segregating you are in fact adding. You put on a dollar and twenty cents for service which you were already paid for. The Commission finds that the cheapest routes are the Rock Island and the Chicago and Alton, and that their entire cost is already covered by the through rate excepting eighty cents. It is reached this way: There is one road that does not deliver this stock in the city over its own rails. It shifts the stock off outside of Chicago some miles for its own convenience—not for the convenience of the shipper, but for the convenience of the road itself—and it runs its cars over the tracks of another road. It puts in another charge for that; and after it gets to the city of Chicago it runs over another railroad and charges for that, and then it strikes the stock yards and charges eighty cents for that. All of these expenses had been covered by the through rate prior to June 1, 1894,

244 and yet when they come to make a showing it is a constructive showing. Mr. Chappell, who represents the Chicago and Alton, and all of these gentlemen testified that the only justification for the putting on of this two-dollar charge was the trackage charge. But afterwards when their attorneys found it necessary to make up some sort of a showing that would cover the two dollars, they proceeded to set down on paper and add up the cost of their engines, cost of firemen and switchmen who brought the trains to Chicago, and so much trackage charge where they run over the tracks of other railroads. All of that is covered by the twenty-three and a half cents from Kansas City, and so the Commission found; and the Commission said, "You shall not put that again in as a terminal service, as you have already been paid for it out of your

through rate. We think and find that the Chicago rate on May 31, 1894, included, as it had included for the last thirty years, a delivery and unloading of the stock at the Union Stock Yards, and that rate, upon the record in this case, was a just and reasonable one. June 1, 1894, these defendants by concerted agreement among themselves increased this rate two dollars per car. If the rate on May 31st was a just and reasonable one unless some new condition justified the imposition of that additional charge. We have found that to the extent of one dollar a new condition did justify the additional charge, for the reason that then, for the first time, the stock yards company exacted this trackage charge. In other words, the cost of service to the defendants was increased by just one dollar on that day. It must follow, therefore, as a necessary conclusion, that of the increase which the defendants made one dollar was justifiable and one dollar was unjustifiable. This is not, however, because two dollars is an unreasonable charge for transporting a car to the stock yards if that service was performed by some independent agency, but because since the defendants were already receiving compensation for this service they ought not to charge for it a second time."

The Commission said they were already in their through rate receiving compensation for that service, and it was made up on that basis. Take the Chicago and Alton—and if competition prevailed here, if the shipper had the benefit of the competition—the Chicago and Alton and the Rock Island are the two short lines; they had no increase in expense after 1894 except this trackage charge of forty cents, and they each made that the pretext of going in with these other defendants and agreeing on a two-dollar rate. It is true that the North-Western had to pay more than they did. They had to pay seventy-five cents each way. Why?

245 Because the North-Western tracks were further removed from the stock yards tracks than the Rock Island or Alton, and they had to run further over the stock yard tracks, and so the stock yards company says, "you use more of our rails than the Chicago and Alton, and we will make our charges in proportion, and as you run nearly twice as far we will charge you seventy-five cents each way, while we only charge the Rock Island and Alton forty cents each way."

Now that was the only increase of cost. The rate that prevailed was the same afterwards as before 1894, and covered the cost that these railroads were to, and when the North-Western made its statement and shows its terminal expenses attributable to this class of traffic is $3.10 it puts in the actual costs, together with some estimated cost on the capital invested for its entire terminal service, but that entire terminal service, excepting seventy-five cents, was embraced in the through rate. These gentlemen can not keep on this second rate unless this court helps them to do it, and this court can not say that is a reasonable rate, except to say you shall be paid twice for the same service. The Chicago and Alton sets the rate. That is the short lines, and the rule has been that the short line makes the rate. And if competition had free play here, it would be eighty cents more only than the through rate, which would be a reasonable rate.

Mr. HANSON. You concede that under section six a terminal charge may be imposed and separated from the transportation charge?

Mr. DAY. Undoubtedly.

Mr. HANSON. Is this terminal charge in and of itself too high? The Commission found not. They have found, considered along that it was not too hight?

Mr. DAY. Yes.

Mr. HANSON. It is considered reasonable by itself?

Mr. DAY. They say, if you look to the cost of the service, but they say, you have already received that in the through rate.

Mr. HANSON. It is reasonable in and of itself, if you can charge what it costs, it is a reasonable charge?

Mr. DAY. I answer your question in the finding of the Commission. They say, looking to the cost of the service it costs as much as you charge, but they say, you have already been paid for that.

Mr. HANSON. I want to ask you——

Mr. DAY. I am not on the witness stand now, and I will not have my argument broken into.

The COURT. Let Mr. Day finish, and when he is through he will answer what question you desire, if he wants to.

Mr. DAY. I was endeavoring to show, and the Commission so
246 find, that the increased costs to the short lines, and those are the lines that fix the rates unless there is a combination, unless these gentlemen have combined, and the Commission finds they have combined; if there was open and free competition what would the Alton have done on June 1, 1894? They would have raised their rates eighty cents a car and no more. But they combined, they got together. The North-Western says, we will have to pay seventy-five cents to get into the stock yards, and you only have to pay forty, let us agree to make this rate two dollars, and they so agree and the Commission so finds, and such is the state of the evidence. In railroading, independent of the antitrust law, and independent of any traffic conditions, the short line makes the rate, just as it does at Omaha and Kansas City, where they couldn't get together and agree. The Missouri Pacific was the road that refused to combine with them, and, as it was the short line, they all had to come down to the Missouri Pacific rate, and if they didn't combine here, they would all have to come down to the Alton rate.

The COURT. The findings show, "that the defendants were proceeding to show by testimony in each case that the actual cost to them of transporting these carloads of live stock, including the trackage charge and the cost of unloading, was equal to or in excess of two dollars. Thereupon it was suggested by the Commission, admitted by the intervenor, and at first partly admitted by the complainant, that the cost of service, including the trackage charge and the cost of unloading, was sufficient to justify the imposition of this terminal charge, provided under the circumstances of this case it could properly be imposed. We understand that the defendants are given the full benefit of this in the report and opinion already filed. To remove all doubt upon that subject, however, if it is not clearly found, we now find that, looking entirely to the cost of service, and including as a part of that cost the trackage charge paid the Union Stock Yards and Transit Company and the unloading charge paid the same company, the amount of this terminal, if, under the circumstances of this case, it is proper to impose the charge, is reasonable."

I say that in view of your calling attention to the Alton road you have barred yourself from insisting that the expenses should be held down to cost of the transfer to the Alton road at less than two dollars, because, it is admitted that on any of these railroads it would amount to two dollars. Here is the point. Whether in their schedule and testimony offered before the Commission they establish the fact whether their line is segregated, their right of way, their trackage, at the point where they went on to the Union Stock Yards track, or whether, by a
247 fair construction of that new schedule they have put this two dollars on top of the old charge for this same piece of line.

(Page 75.)

Mr. DAY. That is exactly what they did, and exactly what the Commission found.

The COURT. Did the Commission find that? That is the issue, and the testimony, if any is to be introduced, should go to that point; whether that is a fair deduction from the evidence, that is a matter for the court to determine. That the flat rate to Chicago of $50.00 only brought you to the transfer road, and, as Mr. Bowers says, if there was a two-dollar transfer after you got to the stock yards road, if that was less than it cost, then that would throw the discrimination, the excessive rate, on the rest of the roads. That is pretty nearly what would seem to me to be the issue, and it is an issue of fact.

Mr. DAY. The Commission has found on that.

The COURT. Yes; you make a prima facie case.

Mr. DAY. They found they already received compensation for all the service they performed in the through rate, excepting this additional trackage, which was forty cents to the Alton and Rock Island and seventy-five cents to some other roads.

The COURT. It is a question whether it goes that way (attaching one piece of paper to the end of another) or whether it is on top (placing one piece of paper on the other).

Mr. BETHEA. The court wants the evidence to go to that point?

The COURT. Yes.

Mr. BOWERS. I suggest to Mr. Kellogg to bring on some of our tariffs.

Mr. KELLOGG. I withdraw the last question objected to.

Mr. COWAN. We want the written schedule of rates filed with the Commission. They are the best evidence. We don't want the testimony of a witness who says the rates went up and then went down. Let the schedules be introduced.

The COURT. It may be that the schedules would be obscure, and it would be proper for them to place their construction on them. It is competent to show how the schedule was constructed by the railroads. (Page 77.)

(Mr. Kellogg continues the examination of Mr. Bird.)

Q. What is this paper marked C. M. & St. P. Exhibit one?

A. That is a tariff.

Q. Filed with the Commission, the Interstate Commerce Commission at Washington?

A. Filed with the Interstate Commerce Commission at Wash-
248 ington, showing that in addition to the rates made to and from Chicago on live stock and all other carload traffic there will be an additional charge of two dollars per car on property delivered to or received from the Union Stock Yards. Also copies of various tariffs on live stock and other freight, showing the two-dollar additional charge in each case. The live-stock tariff bears this note: "In addition to rates provided for herein, a terminal charge of two dollars per car will be made by this company on live stock received from or delivered to the Chicago Union Stock Yards and three dollars per car to or from Hammond, Indiana." Then it goes on to provide how the charge must be entered.

Q. What is the date of that?

A. December 1, 1894.

Q. These tariffs were all filed with the Commissioner at about the time of their issue?

A. Ten days before they became effective.

Mr. KELLOGG. We offer Exhibit 1, C. M. & St. P. in evidence. Any objection to it?

(Page 78.)

Mr. COWAN. No objection.

Mr. BOWERS. There are a lot of these tariffs, if you insist on us putting them in.

Mr. DAY. I don't insist on your putting anything in.

Mr. BOWERS. Unless we agree they are in this same general form of the samples we offer, we will have to put them in.

Mr DAY. I don't know.

Mr. BOWERS. Here, for example, in reference to the Atchison road is quoted here in the opinion, I thought you would be willing to say that the tariff was in the form that the court of appeals states it is, as follows:

"On and after July 9, 1894, a terminal charge of two dollars per car will be made in addition to the Chicago rates, as shown in the tariffs of the Western Freight Association, on live stock and other freight received from or delivered to the stock yards or industries located on the tracks of the Union Stock Yards Railway, the Indiana State Line Railway, and $3 a car on shipments received from or delivered to the Northern Indiana Railroad at Hammond."

Mr. DAY. Why not introduce the tariff sheet itself?

Mr. BOWERS. We will have to send for it.

Mr. DAY. Can you show a sheet of that kind was established?

Mr. COWAN. Let it go over until morning.

The COURT. This phrase in reference to the terminal charge is the same in all of them.

Mr. DUNLAP. Yes; our tariffs which provided for the Chi-
249 cago rates were like this circular, and it is simply a question of getting those old tariffs.

The COURT. You ought to agree on that.

Mr. DAY. We have already agreed that they shall go in.

Mr. BOWERS. Is there any objection to the paper marked A., T. & S. F. Ex. one?

(Page 79.)

Mr. DAY. No, sir.

Mr. KELLOGG. Is it admitted that A., T. & S. F. Exhibit one was filed with the Commission?

Mr. DAY. Yes.

Mr. KELLOGG. We offer A., T. & S. F. Exhibit one in evidence.

Mr. BOWERS. It is stipulated that a tariff dated June 27, 1894, was put into effect by the receivers of A., T. & S. F. Ry. Company, reading as follows:

"On and after July 9, 1894, a terminal charge of two dollars per car will be made, in addition to the Chicago rates as shown in the tariff of the Western Freight Association on live stock and other freight received from or delivered to the stock yard or industries located on the tracks of the Union Stock Yards Railway, the Indiana State Line Railway, and $3 a car on shipments received from or delivered to the Northern Indiana Railroad at Hammond."

Is that stipulation satisfactory, Mr. Day?

Mr. DAY. Yes. But I will ask you to admit that all of the defendants in this case were members of the Western Freight Association.

Mr. BOWERS. Yes, it is admitted that they were all members of the Western Freight Association.

Mr. COWAN. Let it go further and state that by combined action they made this charge.

Mr. BOWERS. No.

Mr. KELLOGG. Put in the other tariffs you have and we can probably agree that they are representative of like tariffs.

Mr. DAY. Why don't you produce the first tariffs you put in?

Mr. KELLOGG. Because we can't find them always. The first was by a circular, and afterwards it was included in the tariff.

(Page 80.)

Mr. DAY. The circular itself became the tariff. They were filed with the Commission.

Mr. KELLOGG. I offer Chicago Great Western Exhibit one in evidence.

The COURT. Is the wording different in all of them?

Mr. KELLOGG. A little difference, not much. We will have to show by each road that these tariffs were filed with the Commission. They filed the two-dollar terminal charge tariff with the Commission.

250 Mr. DAY. I don't think there is any doubt of it.

The COURT. Let the tariffs go in, and if they are found to be wrong you can correct them afterwards.

Mr. KELLOGG. I offer in evidence Chicago & North-Western Exhibit one, and it is understood that the same admission is made as to its being filed with the Commission.

I offer in evidence C., B. & Q. Exhibit one, it being understood that it is admitted that it was filed with the Commission.

We offer C., R. I. & P. Exhibit one, and it is admitted that was filed with the Commission about the date of its issue.

While we are finishing this, have you any objection to Mr. Bird leaving the stand, and you can cross-examine him afterwards?

Mr. DAY. No.

Mr. DUNLAP. I will prove this, that during the receivership, on account of Judge Grosscup's order, the two-dollar charge was taken off and a circular to that effect was filed with the Commission?

Mr. DAY. I believe that is true.

Mr. DUNLAP. That afterwards, on January 1, 1894, the Atchison, Topeka & Santa Fe Railway, which purchased the railroad operated by the receivers, issued this circular or tariff and filed a copy of it with the Interstate Commerce Commission showing the imposition of the two-dollar terminal charge. There is no question about that.

(Page 81.)

Mr. DAY. I don't object to it.

Mr. DUNLAP. That will be our proof. We desire, also, as corroborating it, to show the subsequent tariffs. That is true, isn't it?

Mr. DAY. Yes, your statement of that is true.

Mr. DUNLAP. This is the circular issued by the Atchison, Topeka & Santa Fe Railway Company and filed with the Interstate Commerce Commission. Atchison, Topeka & Santa Fe Exhibit two and Atchison, Topeka & Santa Fe Exhibit 3 are offered, and they show the terminal charge on the last page.

Mr. KELLOGG. I offer Illinois Central Exhibit one, I offer Chicago & Alton Exhibit one, I offer Wabash Exhibit one with the same admission that they were filed with the Commission.

Are you willing to admit that each of the tariffs issued by these defendant railroad companies contained the same statement that those introduced, in reference to this two-dollar terminal charge?

Mr. DAY. No, I am not. The admission I will make is this, that J. W. Midgley, chairman of the Western Freight Association, of which you have already admitted these defendant roads were parties to, filed with the Interstate Commerce Commission a paper substantially
251 like that in behalf of all the defendants, and that was regarded as a substantial compliance with the laws so far as the filing of the sheets is concerned, and I want that to go into the evidence.

(Page 82).

Q. (By Mr. KELLOGG.) You testified that tariffs introduced were filed by your company with the Interstate Commerce Commission?

A. Yes, sir.

Q. Has your company filed those tariffs substantially similar to the ones you have put in evidence down to the present time?

A. The first action was a filing of a single-sheet notice to all agents and to the public that in addition to the rates then published on live stock to Chicago there would be an additional charge of two dollars for the transportation to the stock yards. That covered every station on the St. Paul Company's lines.

Q. You are referring to the first issue?

A. Yes; and subsequent thereto when we came to change our tariff sheets that notice in reference to the terminal charge was continued in the case of each tariff, and those tariffs were sent by me to the Interstate Commerce Commission, and we have receipts for them.

Q. Do you know whether the other roads filed the same kind of tariffs?

The COURT. If he knows himself.

A. I don't know; I take it for granted, and believe it to have been a fact, that they did.

Mr. DAY. That is improper and not competent.

Q. What tariffs did Mr. Midgley file?

The COURT. If you know.

A. I know, because he was an employe of our company. I know what tariffs he filed for us. He filed additional notices for us referring to Council Bluffs, Omaha, and South Omaha, and Kansas City, reiterating what I had already published and sent.

(Page 83.)

Q. And that is true of all your tariffs?

A. Yes, sir.

Mr. BOWERS. Do you know whether at this same time you were filing these tariffs yourself on the part of your company with the Commission, whether it was not habit of the other defendant companies to forward these tariffs to Washington in the same way directly themselves?

The COURT. If you saw them do it, and know it of your own knowledge, you may answer.

Mr. BIRD. I have seed some of the tariffs from Washington. That is all I know of my own knowledge.

Mr. COWAN. To shorten this matter, we make the suggestion that we obtain from the secretary of the Interstate Commerce Commission
252 certified copies of these tariff sheets and let them be filed with the court as part of the record in this case. They will show exactly who filed them and what they were, and when they were filed, and that needn't be done to-day, and the case can proceed the same as if they had been filed.

Mr. KELLOGG. We don't know whether they are correct or complete or not, and don't care to do it.

The COURT. If they are not correct we will let yours go in.

Mr. MATHER. No, we won't accept any certified copies that the Interstate Commerce Commission may want to send.

(Page 84.)

P. C. STOHR, a witness produced on behalf of the defendants, being first duly sworn, on direct examination by Mr. Kellogg, testified as follows:

Q. Will you look at the Chicago Great Western Exhibit one? Did the Chicago Great Western Co. file that with the Interstate Commerce Commission?

A. Yes, sir.

Q. From what time down to the present time have the tariff sheets on live stock contained substantially the same provision?

A. This tariff sheet is still in effect, I think. If it is not, the tariff sheets that we have since issued contain this same provision in reference to the terminal charge.

Q. Has your company filed a tariff sheet with the Interstate Commerce Commission on live stock since 1894, and which are still in effect, which contain this clause in reference to the terminal charge?

A. Yes, sir.

Cross-examination by Mr. COWAN:

Q. Why was that sheet and that tariff filed with the Interstate Commerce Commission?

A. Because it represents the charges we decided to make.
Q. Who decided to make?
A. Our company.
Q. Which company is that?
A. The Chicago Great Western.

Cross-examination by Mr. DAY:

Q. At the time you put in that tariff, what was the date of it?
A. The date of it, or the date it was issued, does not appear here, but it was filed within the limit, ten days, just as our other tariffs were filed. (Page 85.)
Q. What is your relation to the Chicago Great Western Company?
A. General freight agent.
253 Q. Was your road a member of the Western Freight Association at that time?
A. Yes, sir.
Q. How long subsequent?
A. We were a member of the Western Freight Association from the date it was organized—that was in 1889 sometime.
Q. Who was its chairman at that time?
A. Mr. Faithhorn for the northwestern division and Mr. Midgley for the southwestern division.
Q. On June 1, 1894, who was chairman?
A. Mr. Midgley was chairman. I am not certain whether Mr. Faithhorn was there at that time or not. We had two chairmen, but just at what time Mr. Faithhorn left I can't say.
The COURT. I thought I made it plain that the thing I wanted you to prove now is, what was the schedule arrangement, or what was the arrangement of the roads with regard to the segregation of the rates from Omaha, or outside points, to Chicago and thence to the stock yards, to show that it was segregated and did not include in this two dollars the whole proportion of the rates.
Mr. KELLOGG. We are proceeding to prove that by putting in the tariffs.
Mr. DUNLAP. We will introduce this in evidence.

Cross-examination of Mr. Bird by Mr. DAY:

Q. You were a witness before the Interstate Commerce Commission when this case was heard by that Commission?
A. At one time; yes, sir.
Mr. KELLOGG. We are not through with Mr. Bird on direct. We are simply now putting in testimony on these schedules.
The COURT. Only cross-examine Mr. Bird on the point of introducing these schedules.
(Page 86.)

J. M. JOHNSON, a witness produced and sworn on behalf of the respondents, on direct examination by Mr. Kellogg, testified as follows:

Q. You are general traffic manager of the Rock Island Road?
A. Not exactly. I am third vice-president, in charge of freight traffic.
Q. I wish you would look at C. R. I. & P. Exhibit one, and state what those are.

A. This is a joint circular issued by the C. R. I. & P. announcing the fact that, taking effect June 1, 1894, the tariffs on live stock, and all other traffic received from or delivered to the stock yards, and all industries located along the tracks of that company, will, in addition to the rates named to and from Chicago, be subject to a terminal charge of two dollars per car.

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Q. Did you file these tariffs with the Interstate Commerce Commission?

A. Yes, sir.

Q. From that time to the present have all your tariffs on live stock shown the same notice as to the two-dollar charge?

A. They have.

Q. And they have all been filed with the Interstate Commerce Commission?

A. Yes, sir.

(Page 87.)

SAMUEL NETHERCOT, a witness produced and sworn on behalf of the respondents, on direct examination by Mr. Kellogg, testified as follows:

Q. I show you C. & N.-W. Exhibit one. Was that filed with the Interstate Commerce Commission?

A. Yes, sir.

Q. Since that time have your tariffs that you have issued on live stock to Chicago from all points shown the same notice as to the imposition of the two-dollar charge?

A. Yes, sir.

Q. And have all been filed with the Commission?

A. Yes, sir.

Q. This first is the notice sent out May 19, 1894?

A. Yes, sir.

Q. This was filed ten days before June 1, 1894?

A. Yes, sir.

Q. What is your position with the North-Western Road?

A. Tariff clerk.

Q. You have charge of doing that work?

A. Yes, sir.

Q. Were these tariffs filed with the Interstate Commerce Commission by the North-Western Road itself?

A. Yes, sir; they were.

Q. Down to the present time?

A. Yes, sir.

Cross-examination by Mr. DAY:

Q. Isn't it a fact that the North-Western Road is a member of the Western Freight Association?

A. Yes, sir.

Q. And Mr. Midgley is chairman of that association?

A. Yes, sir.

(Page 88.)

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Q. Reading from the record here, I desire to ask who the members of that association were. Was the Atchison, Topeka & Santa Fe a member of that association?

A. I think they were. I couldn't state.

Mr. KELLOGG. Objected to as not cross-examination.

The COURT. If he wants to show by this witness that they filed a different schedule with the Interstate Commerce Commission, he can.

Mr. COWAN. The object is to show who were members of the Western Freight Association?

The COURT. That couldn't be cross-examination.

(To which ruling the petitioner then and there excepted.)

Q. Did Mr. Midgley file a tariff, showing the same thing?

A. I couldn't say as to that. Mr. Midgley did file certain tariffs for the North-Western Road between Chicago, Omaha, and Kansas City and some other points, but they were all duplicated by our road as well. So that, if Mr. Midgley filed them, it would be a duplication.

Q. He did file tariffs for the points you mention?

A. I think so; I couldn't say.

W. B. HAMLINE, a witness produced and sworn on behalf of the respondents, on direct examination by Mr. Kellogg, testified as follows:

Q. What is your business?

A. Assistant general freight agent of the Chicago, Burlington & Quincy Railroad.

Q. Do you know whether the tariffs introduced in evidence, or the circular in evidence, marked C., B. & Q. Exhibit one was filed with the Interstate Commerce Commission?

A. It was.

Q. By the C., B. & Q. Railroad?

A. Yes, sir.

(Page 89.)

Q. Have you from that time to the present inserted the same notice in reference to the terminal charge on all live-stock tariff from all points to Chicago, and filed them with the Interstate Commerce Commission?

A. Yes, sir.

Q. This filing was done by the Burlington road itself?

A. Yes, sir.

Cross-examination by Mr. DAY:

Q. How do you know this was filed with the Commission?

A. As well as I know that any tariff was filed with the Commission. We are obliged to file them.

Q. You said you knew it had been filed; what is the source of
256 your information?

A. The knowledge that everything of that kind published by the company is filed with the Commission.

Q. You didn't file it yourself?

A. No, sir.

Q. Or didn't see that it was sent to them?

A. No, sir.

Q. You say this tariff has been in force ever since?

A. Yes, sir.

Q. Wasn't there a period of time that you didn't enforce this on Texas business, during the time the Atchison, Topeka & Santa Fe had it out?

A. I think not.

Q. You collected it during the time the Atchison, Topeka & Santa Fe was not collecting it?

A. Yes, sir; if we received the stock.

Q. Do you remember how that was, as a matter of fact?

A. I am very positive we collected this on every car of stock which we took to the stock yards.

(Page 90.)

Q. Collected from whom?

A. From the people at the stock yards the same as we collected anything.

Q. Did you rebate it on your Texas business?

A. No, sir.

ARTHUR L. WYLIE, a witness produced and sworn on behalf of the respondents, on direct examination by Mr. Kellogg testified as follows:

Q. What position do you occupy with the Wabash road?

A. Traveling freight agent.

Q. Do you know about the filing of its tariffs with the Interstate Commerce Commission?

A. Yes, sir.

Q. I show your circular, marked Wabash Exhibit one; were these filed with the Commission at Washington by the Wabash road?

A. Yes, sir; they were.

Q. Have those or similar tariffs that have been in existence ever since been filed with the Commission?

A. Yes, sir.

Q. Were these tariffs filed by the Wabash Railroad itself?

A. Yes, sir; they were filed by the Wabash.

257 J. E. GORMAN, a witness produced and sworn on behalf of the respondents, on direct examination by Mr. Dunlap, testified as follows:

Q. You are general freight agent of the Atchison, Topeka & Santa Fe Ry.?

A. Yes, sir.

Q. When did the Atchison, Topeka & Santa Fe Railway Company first commence to operate a line to Chicago?

A. January 1, 1896.

(Page 91.)

Q. And before that time by whom had the line been operated?

A. The receivers.

Q. Of what road?

A. The Atchison, Topeka & Santa Fe Railroad.

Q. Look at A., T. S. & F., Exhibit 4.

Mr. DAY. We admitted that once.

Mr. DUNLAP. You admitted that this was sent to the Interstate Commerce Commission?

Mr. DAY. I did admit that as to Atchison, and still stand by the admission.

Q. You are familiar with the tariffs issued by your company?

A. Yes, sir.

Q. And that have been issued since January 1, 1896?
A. Yes, sir.

At the time the Atchison, Topeka & Santa Fe Railway Company took possession the receivers were not making the terminal charge, I believe?

A. No, sir; under the order of Judge Grosscup.

Q. Then this circular was issued by the new company imposing this charge?

A. Yes, sir.

Q. I will ask you whether upon all live-stock tariffs affecting shipments to Chicago, and which have been issued since this circular which was sent to the Interstate Commerce Commission February 13, 1896, contained a notation on the tariff similar to the one found on this tariff?

A. No; it was not similar to this one.

Q. What was it similar to?

A. To the next issue.

Q. Is it similar to the notation found on that tariff?

A. Yes, sir.

(Page 92.)*

Q. You might read that notation on Exhibit 3, A., T. & S. F.?

A. "The stock yards of this company in Chicago are now located at Corwith. The former rates to Chicago found in the tariffs or schedules as applicable to Chicago will only apply to live stock delivered at
258 the stock yards of this company at Corwith, in said city. Upon all live stock consigned to the Union Stock Yards in Chicago, and transported and delivered to said Union Stock Yards, an additional charge of two dollars per car will be added to the rates applicable to Corwith for transporting such car to said Union Stock Yards."

Q. Are those tariffs as issued by your company, or copies of the same, sent to the Interstate Commerce Commission by your company?

A. Yes, sir.

Cross-examination by Mr. COWAN:

Q. When you first made your statement you said that the reading on the paper that you then had in your hand didn't show similar recital to that contained in the subsequent tariffs. I want to know when that first took effect, when the other one, the one that you read from?

A. I don't know offhand, but I could tell if I had the papers. This was corrected immediately after it was issued in this way and changed to the present wording. The present wording was put in the latter part of January, 1896 (A., T. & S. F. 4).

Redirect examination by Mr. DUNLAP:

Q. I will ask you whether the Atchison, Topeka & Santa Fe Railway, about the time it took possession of this road, built any stock yards in Corwith?

A. Yes, sir.

Q. Is Corwith in the city of Chicago?

A. Yes, sir.

(Page 93.)

Q. I will ask you whether any of these live-stock commission men of the city of Chicago ever asked the Atchison Company, to your knowledge, to deliver any stock at Corwith?

A. No. sir.

Q. As I understand it, when a train load of cattle arrives at Corwith, in order to go to the stock yards the train is broken at that point?

A. Yes, sir.

Q. And there is a separate engine and shipping crew that transfers it from Corwith, over what line of railroad first?

A. A short distance over our own tracks, then over the Terminal Railroad, and then over the stock yards' tracks.

Q. To the Union Stock Yards, where it is to be delivered?

A. Yes, sir.

259 Cross-examination by Mr. DAY:

Q. What road do you mean when you say the Terminal Railroad?

A. It is the Terminal Railroad. It is a part of the line formed of the Chicago, Hammond & Western and the old Union Stock Yards tracks, making the Chicago Junction Railway.

Q. It is a part of the Chicago Junction?

A. Yes, sir.

Q. Is your road interested in that?

A. I don't know.

Q. What is your understanding?

A. I haven't had any information on the subject.

Q. What is your daily average receipt of stock cars per day?

A. I couldn't say.

Q. Approximately?

A. I couldn't say.

Q. What is your position?

A. General freight agent.

(Page 94.)

Q. And you can't approximate how many cars of live stock you average a day? What is the capacity for handling live stock at Corwith? How many cars of stock can you unload at Corwith daily?

A. I don't know, of my own knowledge. The men who have charge of that business say it would accommodate in the neighborhood of fifty cars at a time.

Q. That you can unload fifty cars?

A. That it would hold fifty cars.

Q. What are your facilities for unloading, storing stock, and handling it for 24 hours?

A. I haven't seen the yards myself for some little time. As I recall it, there is an unloading chute and an ordinary yard.

Q. How many unloading chutes?

A. I think one.

Q. What is the size of it?

A. About five feet; I should say six.

Q. How large is this yard?

A. It would have to be a guess on my part; it is quite a while since I saw it.

Mr. DUNLAP. Do you pretend to say it is not sufficient for all the cattle that are consigned to our yards, or not?

Mr. DAY. I don't know whether it is or not. That is the point.
Q. You say you don't know what the capacity of the pens is?
A. I said my information was that it holds about fifty cars.
Q. That there were pens there to accommodate fifty cars?
A. About that.
Q. On the tracks?
A. No, sir; in the enclosure.
Q. You are unable to give the court an approximate idea of the number of cars you received daily?
A. No, sir; I don't pretend to.
260 Q. Is it all one pen, or different pens?
A. There are not many of them; about three or four, as I now recall it.
(Page 95.)
Mr. DUNLAP. Whenever you want us to increase our facilities and will guarantee us stock shipments we will do it with pleasure.

Cross-examination by Mr. COWAN:

Q. When you receive live stock on your road from points coming here you know, as a matter of fact, that it must go to the stock yards in order to be sold?
Mr. DUNLAP. Objected to as not proper cross-examination.
(Objection sustained, to which ruling petitioner then and there excepted.)

M. C. MARKHAM, a witness produced and sworn on behalf of the respondents, on direct examination by Mr. Kellogg, testified as follows:

Q. I notice that the circular introduced in evidence here, Illinois Central Exhibit one, dated April 19, 1897; you have one dated earlier than that, haven't you?
A. Yes, sir.
Q. Will you bring it here to-morrow morning?
A. Yes, sir.
Mr. KELLOGG. I offer in evidence the transcript from the circuit court of appeals, containing the complete record in the case of Walker et al., receivers for the Atchison, Topeka & Santa Fe Railroad Company, vs. Wilson T. Keenan et al. This copy is not properly certified by the clerk of the court of appeals.
Mr. DAY. We object to it because it is not relevant to the issues in this case. There is no plea of res adjudicata here (page 96). Of course, for the information of the court, as stare decisis, we wouldn't object to it. There are numerous reasons why it couldn't be urged as res adjudicata in this case. Those reasons would arise on the final argument of the case. They were referred to in the argument of the demurrer. I don't care to go into the argument as to why it wouldn't be admissible as res adjudicata.
The COURT. I wouldn't admit it over your objections. A declaration of the court of appeals that a charge may be made will be about as good with this court without being introduced in evidence. There is no use sending to the court of appeals a case they have already decided.
Mr. KELLOGG. As I was going to suggest, the Atchison, Topeka
261 & Santa Fe Railway Company acquired the property of the railroad company during the time of this litigation before the decision,

and while this litigation was pending, and that the same identical parties who filed this complaint were complainants against the Atchison, Topeka & Santa Fe Railway, and we plead that that case is res adjudicata.

The COURT. On what points?

Mr. KELLOGG. On this charge. The decision of the court of appeals was that the division of that tariff was a division of the service between the original point and the stock yards. That is the only question involved here.

The COURT. They do not decide that the tariff is lawful. They say that was not the question in that case.

Mr. KELLOGG. That particular tariff was in the record and in the decision.

The COURT. There is no question made as to whether it is a fair charge.

Mr. KELLOGG. They go farther, and they say the tariff in evidence, this charge, the through tariff, is from a point of origin to the place where, in Chicago, the railroad company's tracks connect with the tracks of the stock yards company, and the two dollars is from that place to the stock yards. That is what the court decided, and that appeared in that record. (Page 97.)

Mr. BETHEA. It also appears that there was no such evidence as there is in this case. The rate was never challenged. We want the court to examine this.

The COURT. If there is a difference in fact in the case now presented it ought to be brought before the court. The contest turned on a different point in that case, it turned on the legality of any charge.

Mr. KELLOGG. It is admitted here that the services that we performed for that two dollars are worth two dollars, cost us two dollars. That is the finding of the Commission. This is a decision on that tariff, that the two dollars was not included in the other charge.

Mr. BETHEA. The only objection we have is that it encumbers the record. We will withdraw our objection.

The COURT. As to so much of it as is pertinent, and either party desires to use, it may go in.

Defendants then offered a properly certified and authenticated copy of the record in the United States circuit court of appeals for the seventh circuit, in the case of Aldace F. Walker, John J. McCook, and
262 Joseph C. Wilson, receivers of the Atchison, Topeka & Santa Fe Railroad Company, appellants, vs. Wilton T. Keenan, at al, intervenors, appellees, being numbered 275, at the October term, 1895, of said court of appeals, and the same was received in evidence without objection.

It is stipulated, however, for the purpose of preventing this certificate from being voluminous and as saving a large expense in printing, that such record of the said court need not be incorporated directly, in this certificate, and need not be printed, but that either complainant or defendants may at any time and for any proper purpose refer to and use, as a part of this certificate, the original record of the said court, or a copy thereof, certified or authenticated in the customary manner.

C. & N. W. Ex. 1 was read as follows:

[Chicago & North-Western Railway. Chicago, St. Paul, Minneapolis & Omaha Ry., Fremont, Elkhorn & Missouri Valley R. R., Sioux City & Pacific R. R.]

GENERAL FREIGHT DEPARTMENTS, *May 19, 1894.*

To all agents:

Taking effect June 1, 1894, the tariffs on live stock and all other traffic received from or delivered to the Union Stock Yards, and all industries located on the tracks of the Union Stock Yards Ry., the Indiana State Line Ry., or the Northern Indiana R. R. at Hammond, Ind., will in addition to the rates named to or from Chicago, be subject to a terminal charge of $2 per car.

This charge must in all cases be added to the through rate and must be shown separately on the waybill as miscellaneous earnings and a delivering expense; it must also be provided for and shown in contracts and bills of lading.

The foregoing will apply as a supplement to all tariffs issued by this company, also to all joint tariffs issued by connections and applying over this line. It will supersede entirely Rule 7 in the routing and waybilling instructions governing freight destined to and from Chicago locally or points beyond Chicago (C. & N. W. G. F. D. No. 7575; C., St. P., M. & O. G. F. D. No. 1715; F., E. & M. V., and S. C. & P. G. F. D. No. 829 of 1893.)

H. R. MCCULLOUGH,
General Freight Agent, C. & N. W. Ry., Chicago, Ill.
K. C. MOREHOUSE,
General Freight Agent, F., E. & M. V., and S. C. & P. R. R.'s, Omaha, Neb.
J. T. CLARK,
General Freight Agent, C., St. P., M. & O. Ry., St. Paul, Minn.

263 C. & A., Ex. 1, was read in evidence as follows:

Chicago & Alton Railroad Co. Tariff No. 1768 (superceding tariff No. 912), on live stock carloads from stations in Illinois to Brighton Park (Chicago). Taking effect March 20, 1895.

Shipments consigned to Union Stock Yards will, in addition tothe rates named in this tariff, be subject to a delivery charge of $2.00 per car, which must be shown as a separate item on waybills and stubs.

Application of rates on live stock:

The rates named in this tariff on live stock, carloads, will be subject to the following minimum rates:

	Cattle and calves.	Hogs, single-deck cars.	Sheep, single-deck cars.
In cars 31 feet and under in length, inside measurement	19,000	15,000	10,000
" 33 feet 9 inches and over 31 feet, inside measurement ...	20,500	16,000	11,000
" 36 feet and over 33 feet 9 inches, inside measurement .	22,000	17,000	12,000

Horses and mules, carloads, will be charged for at 110 per cent of the rates on cattle, C. L. governed by the same minimum weights for the various-sized cars.

NOTE.—Live stock, C. L., when forwarded in cars exceeding 36 feet in length, internal measurement, an additional charge of one per cent will be made for each additional two feet or fraction thereof.

Shipments will be waybilled at the minimum weights named, subject to correction at destination to actual weight, if greater.

Agents must in all cases note on billing the length of car in which stock is loaded.

H. H. COURTRIGHT,
General Freight Agent, C. & A. R. R., Chicago, Ill.
A. NEWMAN,
Assistant General Freight Agent, C. & A. R. R., Chicago, Ill.
JOHN NESBITT,
General Live Stock Agent, St. Louis, Mo.

264 *Carloads.*

[In cents per 100 lbs.]

To Brighton Park (Chicago) from—	Cattle and calves.	Hogs, single deck.	Sheep, single deck.
Summit	5.5	6.2	6.6
*Mt. Forest	6	7.2	7.2
Willow Springs	6	7.2	7.2
Lemont	6.5	8.4	8.4
Lockport	6.7	9	9
Williamsville	11.3	15.3	17.5
Sherman	11.4	15.5	17.6
Springfield	11.5	15.7	17.7
Woodside	11.8	16.1	17.9
Chatham	11.8	16.1	17.9

*No agent. Subject to minimum weights as per length of cars shown on either side.

(Here follows lists of various stations and rates from those stations to Brighton Park (Chicago) in manner similar to the foregoing particular instances. These lists are omitted by agreement in order to shorten the record.)

A., T. & S. F. Exhibits 1, 2, 3, & 4 was read in evidence as follows:

Receipt No. 2224. S. F. Authy 4-674.

"Santa Fe Route." 300

Atchison, Topeka & Santa Fe R. R., The Colorado Midland R. R., St. Louis & San Francisco Ry., J. W. Reinhart, John J. McCook, Joseph C. Wilson, receivers.

Manhattan, Alma & Burlington, The Wichita & Western Ry., Leavenworth, Topeka & Southwestern Ry., C. T. McLellan, receiver.

Joint circular.

"Santa Fe" No. 647. "Frisco" No.

Terminal charge at Chicago.

TOPEKA, KAS., *May 29, 1894.*

To agents and others interested: Taking effect June 1, 1894. Tariffs on live stock and all other traffic received from or delivered to the stock yards or industries located on the track of the Union Stock Yards
265 Railway, The Indiana State Line Railway, and Northern Indiana Railroad will, in addition to the rates named to or from Chicago, be subject to a terminal charge of $2.00 per car.

The foregoing will apply as an amendment to A., T. & S. F. tariffs series 502, 506, 520, 547, and all other tariffs issued by this company; also to all joint tariffs issued by connections and applying over this line.

Reissue of Western Freight Association Joint Circular No. 62.

F. D. RUSSEL,
G. F. A. St. L. & S. F. Ry., St. Louis, Mo.
E. C. GAY,
G. F. A. A. T. & S. F. R. R., The C. M. R. R., M., A. & B. R. R., W. & W. Ry., L., T. & S. W. Ry., Topeka, Kas.

Sent to I S C C May 29, 1894.

Topeka I C C No. 49.
"Santa Fe" Receipt No. 1160. S. F. Authority 4674.

"Santa Fe Route."

The Atchison, Topeka & Santa Fe Railway Co.
Manhattan, Alma & Burlingame Railway, Hiram P. Dillion, receiver.
The Wichita & Western Railway, Joseph H. McEntire, receiver.
Leavenworth, Topeka & Southwestern Railway, C. T. McLellan, receiver.
The Southern Kansas Ry. Co. of Texas. Rio Grand & El Paso R. R.

Joint Circular No. 647–E. (Canceling Joint Circular No. 647–D.)

Terminal charges at Union Stock Yards (Chicago) and Hammond, Indiana.

To agents and others interested:

Taking effect February 1, 1896, a terminal charge of $2.00 per car will be made in addition to the Chicago rate on live stock and all other freight received from or delivered to the Union Stock Yards or industries located on the tracks of the Union Stock Yards Ry., Union Stock Yards & Transit Co., or the Indiana State Line Ry.

A terminal charge of $3.00 a car will be made on live stock and all other freight received from or delivered to the Northern Indiana R. R. at Hammond.

The rates on live stock shown in the various tariffs to Chicago apply only to the stock yards of this company at Corwith, in Chi-
266 cago, the $2.00 additional being for delivery at the Union Stock Yards at Chicago.

The attention of the shipper must be called to the fact that the transportation charge on live stock delivered at our own yards at Corwith, in Chicago, will be $2.00 per car less than when delivered at the Union Stock Yards at Chicago, and you must ascertain definitely at which point shippers desire delivery made. The live-stock contract must then be filled out so as to show the correct destination and rate as provided by the amended tariffs.

Care must be taken to have the stock correctly billed either to Corwith, in Chicago, or to Union Stock Yards at Chicago, as designated by the shipper, and the correct rate shown in the billing.

Bills of lading covering freight to or from the Union Stock Yards, etc., must provide for the above terminals.

In waybilling shipments destined to or coming from the Union Stock Yards, etc., the terminal charges, if any, must be shown separately in the freight column.

The foregoing will apply as an amendment to all tariffs issued by this company and all joint tariffs issued by connections and applying over this line, which name rates to or from Chicago. (Reissue.)

W. B. BIDDLE,
Freight Traffic Manager "Santa Fe System," Chicago, Ill.
J. E. GORMAN,
Asst. Gen. Freight Agent, A., T. & S. F. Ry., Chicago, Ill.
L. J. POLK,
General Freight Agent G. C. & S. F. Ry., Galveston, Texas.
W. A. BISSELL,
Asst. Freight Traffic Manager "Santa Fe System," Chicago, Ill.
C. R. HUDSON,
Asst. Gen. Freight Agt. A., T. & S. F. Ry., M., A. & B. Ry., The W. & W. Ry., L., T. & S. W. Ry., Topeka, Kan.
J. N. FREEMAN,
Gen. Frt. Agt. The So. Kas. Ry. Co. of Texas, Panhandle, Tex.
J. O'CONNOR,
General Freight Agent, R. G. & E. P. R. R., El Paso, Tex.

Issued at Topeka, Kansas, and sent to Interstate Commerce Commission February 13, 1896.

267 Topeka, I. C. C. No. 1075. (Cancels I. C. C. No. 547.)
"Santa Fe route." "Santa Fe system." Authority 41–B.

The Atchison, Topeka & Santa Fe Ry. system.

The Atchison, Topeka & Santa Fe Railway.

Leavenworth, Topeka & South-Western Ry., Gulf, Colorado & Santa Fe Railway; C. T. McLellan, receiver.

Choctaw, Oklahoma & Gulf Railroad Co., The Kansas Southwestern Railroad. C. O. & G. No. 257–B.

(Cancels No. 257–A.) And connections as per page 3.

Joint Live Stock Tariff "Santa Fe system" No. 41–B.

(Cancels "Santa Fe system" Joint Live Stock Tariff No. 41 A). Between St. Louis, Mo.; Ft. Madison, Iowa; Chicago and Peoria, Ill. (for application of rates see page 3 of tariff), and points in Kansas, Colo-

rado, Oklahoma Territory, and Indian Territory; also Superior, Nebr. Effective October 1, 1899.

Governed by the Western classification, except as provided for herein.

W. B. BIDDLE,
F. T. M., "Santa Fe System," Chicago, Ill.

J. F. HOLDEN,
T. M., C., O. & G. R. R., South McAlester, I. T.

A. N. BROWN,
T. M., The K. S. W. R. R., Arkansas City, Kan.

J. E. GORMAN,
G. F. A., A., T. & S. F. Ry., Chicago, Ill.

C. R. HUDSON,
A. G. F. A., A., T. & S. F. Ry., L., T. & S.-W. Ry., Topeka, Kas.

P. H. GOODWYN,
G. F. A., G., C. & S. F. Ry., Galveston, Tex.

ELI TITUS,
G. L. S. A., "Santa Fe System," Kansas City Stock Yards, Kansas City, Mo.

Issued at Topeka, Kansas, and sent to Interstate Commerce Commission September 25, 1899, by C. R. Hudson.

Application of rates, Chicago, Pekin, and Ft. Madison:

Rates named herein as applying to or from Chicago, Pekin or Ft. Madison and points taking same rates will apply only when shipments are routed through via lines of the "Atchison system," except as shown below.

Rates named herein as applying to or from Chicago, Peoria,
268 St. Louis, or Ft. Madison will also apply to or from Chicago, Peoria, and Mississippi River rate points located on lines indicated below, as provided for in "Santa Fe system" joint circular, series 513, Topeka.

I. C. C. No. 1000.
Chicago & Alton R. R.
Chicago & Eastern Illinois R. R.
Chicago & Grand Trunk Ry.
Chicago & North-Western Ry.
Chicago, Ft. Madison & Des Moines R. R.
Chicago Great Western Ry.
Chicago, Milwaukee & St. Paul Ry.
Chicago, Peoria & St. Louis R. R. of Illinois.
Cleveland, Cincinnati, Chicago & St. Louis Ry.
Chicago Terminal Transfer R. R.
Elgin, Joliet & Eastern R. R.
Hannibal & St. Joseph R. R.
Illinois Central R. R.
Indiana, Illinois & Iowa R. R.
Iowa Central Ry.
Keokuk & Western R. R.
Lake Erie & Western R. R.
Lake Shore & Michigan Southern Ry.

Missouri Pacific Ry.
Missouri, Kansas & Texas Ry.
Omaha, Kansas City & Eastern R. R.
Pennsylvania Co.
(Pittsburg, Ft. Wayne & Chicago Ry.)
Peoria, Decatur & Evansville Ry.
Rock Island & Peoria Ry.
St. Louis & Hannibal Ry.
St. Louis, Keokuk & Northwestern R. R.
St. Louis, Peoria & Northern Ry.
St. Louis & San Francisco Ry.
Terre Haute & Indianapolis R. R.
Wabash Railroad.
Winona & Western Ry.

(Exceptions:) Rates named herein on live stock to or from points on the G., C. & S. F. in Indian Territory—Wayne to Thackerville, inclusive—will apply only from or to points reached via lines of the Atchison system.

The proper officers of the above-named lines will file concurrence with Interstate Commerce Commission.

269 Index No.	Between—	And—	Horses and mules, in dollars and cents, per car of standard length.	Carloads of not less than minimum, as shown on page 28. In cents per 100 lbs.		
				Cattle.	Hogs, S. D. cars.	Sheep, S. D. cars.
1	Atchison, Kan	St. Louis	55.00	14½	18½	17½
		Chicago	75.00	23½	23½	25
2	*Parnell, Kan	†St. Louis	55.00	14½	18½	17½
		†Chicago	75.00	23½	23½	25
3	*Hawthorn, Kan	†St. Louis	55.00	14½	18½	17½
		†Chicago	75.00	23½	23½	25

(Here follow lists of all stations on the Atchison, Topeka & Santa Fe Railway and of the rates on live stock from those stations, given in manner like that in which the rates are above shown from the three 270 stations of Atchison, Parnell and Hawthorne, Kans. These extensive lists of stations and rates are omitted by agreement, in order to shorten the record.)

* * * * * * *

Minimum weights on Colorado traffic.

Where the rates in this tariff from or to points in Colorado are named in cents per 100 pounds, such rates will apply on shipments in either common or palace cars, which will be weighed and charged at rates named

herein for the actual weight, but not less than the following minimum weights:

	Cattle.	Hogs, double-deck cars.	Hogs, single-deck cars.	Sheep, double-deck cars.
Cars 31 feet or under in length, inside measurement.....	21,500 lbs.	30,000 lbs.	15,000 lbs.	19,000 lbs.
Cars over 31 feet to but not in excess of 33 feet 9 inches in length, inside measurement.....	23,000 "	32,000 "	16,000 "	20,500 "
Cars over 33 feet 9 inches to and including 36 feet in length, inside measurement.....	24,000 "	34,000 "	17,000 "	22,000 "

Maximum rates: Colorado common-point rates as published in "Santa Fe System" Joint Freight Tariff Series 50 will be the maximum rates to apply at all points in Kansas, including Superior, Neb.

Rules and regulations governing shipments of live stock and the transportation of men in charge:

1. The rates shown in this tariff will be valid only when shippers execute the proper live-stock release on regular stock contract, and will apply on shipments carried in ordinary or palace stock cars. Any extra charge on palace stock cars, such as rental, etc., must be paid by the shipper or consignee, the railroad company agreeing only to haul the palace cars at the same rate as common cars.

2. Application of rates on live stock: Where the rates in this tariff are named in dollars and cents per car, such rates will apply on live stock in either common or palace cars of 29 feet to and including 30 feet 6 inches, inside measurement. Such cars will be known as standard cars.

271 Cars less than 29 feet will be charged 94 per cent of the tariff for standard cars.

Cars over 30½ feet, to and including 32 feet, will be charged 104 per cent of the tariff for standard cars.

Cars over 32 feet, to and including 33 feet 9 inches, will be charged 107 per cent of the tariff for standard cars.

Cars over 33 feet 9 inches, to and including 36 feet, will be charged 110 per cent of the tariff for standard cars.

Cars over 36 feet, to and including 38 feet, will be charged 113 per cent of the tariff for standard cars.

Cars over 38 feet, to and including 40 feet, will be charged 116 per cent of the tariff for standard cars.

Cars over 40 feet, to and including 42 feet, will be charged 125 per cent of the tariff for standard cars.

Cars over 42 feet, to and including 44 feet, will be charged 135 per cent of the tariff for standard cars.

Cars over 44 feet will be charged 140 per cent of the tariff for standard cars.

3. Minimum weights: Where the rates in this tariff are named in cents per 100 pounds, such rates will apply on shipments in either common or palace cars, which will be weighed and charged at rates named herein for the actual weight, but not less than the following minimum weights, except on shipments to and from Colorado:

272	Cattle; also sheep in double-deck cars.	Hogs, double-deck cars.	Hogs, single-deck cars.	Sheep, single-deck cars.
Cars 31 feet or under in length, inside measurement	19,000 lbs.	30,000 lbs.	15,000 lbs.	10,000 lbs.
Cars over 31 feet to, but, in excess of 33 ft. 9 in. in length, inside measurement	20,500 "	32,000 "	16,000 "	11,000 "
Cars over 33 feet 9 inches, to and including 36 feet in length, inside measurement	22,000 "	34,000 "	17,000 "	12,000 "
Cars over 36 feet, to and including 40 feet in length, inside measurement	24,000 "	38,000 "	19,000 "	14,000 "
Cars over 40 feet in length, inside measurement	26,000 "	42,000 "	21,000 "	16,000 "

273 4. Sheep in double deck or tiered cars (in cents per 100 pounds) will take same rates and minima as cattle, except from or to points in Colorado. (See pages 24, 25, and 26.)

5. Hogs in double-deck cars: The rates named herein on hogs in S. D. cars (in cents per 100 pounds) apply to both single and double deck cars, subject to minimum rates provided for in Rule 3, except on traffic from or to poiuts in Colorado. (See top page 28.)

6. Calves, single-deck cars: Apply cattle rates.

7. If shippers desire double-deck cars the lines parties hereto reserve the privilege of furnishing single-deck cars, to be fitted with an upper deck at the expense of shipper and according to instructions given by agent, the company being fully guaranteed that the cars will be left in as good condition as when the same were furnished. Shippers or owners must assume all liability of damage to stock that may be occasioned by the extra decks placed in such cars.

8. Live stock at carrier's risk: Rates named herein will apply only on shipments of live stock made at owner's risk, and limitations (upon declared valuations shown below) of the liability of this company or other companies parties to this tariff, as common carriers under the terms and conditions of the current live-stock contract provided by said railroad companies. Said contract to be first duly executed in manner and form provided for herein.

(a) Rates named herein are based upon declared valuation by the shippers, not to exceed the following:

Each horse or pony (gelding, mare, or stallion), mule or jack, $100.00; each ox, bull, or steer, $50.00; each cow, $30.00; each calf, $10.00; each hog, $10.00; each sheep or goat, $3.00.

(b) Where the declared valuation exceeds the above an addition of 25 per cent will be made to the rate of each 100 per cent or fraction thereof of declared additional valuation per head; animals exceeding in value $800 per head will be taken only by special arrangement.

(c) One hundred and fifty per cent (150 %) of the rates named herein will be charged on shipments of live stock made without limitation of company's liability at common law, and under this status shippers will

have the choice of executing and acceptings contracts for shipment of live stock, with or without limitation of liability, and rates accordingly.

9. Live stock mixed, C. L.: On shipments of mixed live stock C. L. between all points named in tariff and St. Louis and common points, charges will be assessed as follows:

Cattle and hogs mixed, C. L., will take hog rate and minimum weight.

274 Cattle and sheep mixed, C. L., will take sheep rate and minimum weight.

Cattle, hogs, and sheep mixed, C. L., will take sheep rate and minimum weight.

Hogs and sheep mixed, C. L., will take sheep rate and minimum weight, subject to provision that when a full deck of sheep and a full deck of hogs are loaded in a double-decked car, the single-deck rate on each will apply.

In no case shall the charge for a car of mixed live stock be less than would be charged upon a straight carload of cattle in same length of car. Any of the above stock, when loaded with horses or mules, will take horse rates, subject to a minimum weight of 20,000 pounds, excess weight at proportionate rate. Each class of stock to be separated by good and sufficient partition fastened to the car without the use of nails or spikes, or any other fastening which will injure or deface the car.

On shipments of mixed live stock, C. L., between all points named in tariff and Chicago, Peoria, and common points, freight charges will be based on the highest minimum weight and the highest rate provided for the kind of stock loaded in the car. Cattle, hogs, or sheep, when loaded with horses and mules, will take horse rates, subject to minimum weight of 20,000 pounds. Any eccess over 20,000 pounds to be charged for at a proportionate rate. Each class of stock to be separated by a good and sufficient partition fastened to the car without the use of nails or spikes, or any other fastenings which will injure or deface the car.

10. Bedding for live stock to and from Missouri River points may be furnished without extra charge, but when furnished by the shipper at his own expense a reduction of 50 cents per car in the rate is authorized, waybills to bear notation to that effect in each case, this notation to be certified to by the forwarding agent.

11. The owners of live stock must care for shipments while on the way at their own expense and risk, and the expense of caring, feeding, and watering, if advanced by any of the lines over which the shipments pass, must be paid on delivery at destination by the owner or consignee, in addition to the contract rate.

12. Agents must in all cases give the full name of the shipper on each waybill, in addition to the name of the consignee, and must note on waybill the length of the car, inside measurement.

13. Agents must see that the doors, crossbars, and floors of cars are in perfect order. They must count the stock in the pens as it is being loaded, and enter on stock contract and waybills the number loaded in each car, adding in full the words "more or less." They will render to the shippers all assistance within their control.

275 14. Furnishing stock cars. The different sizes of stock cars will be furnished as near as possible in accordance with shipper's

orders. Agents will not guarantee to furnish any particular size of cars, and will waybill at full tariff rates according to the size of cars used.

15. From or to stations where there are no stock yards or loading chutes the rates as shown herein will only apply where the shippers furnish the necessary appliances for loading or unloading the stock, which must be done at their own expense and risk.

Rules governing passage of men in charge of live stock: First. One man will be passed in charge of one car of cattle, calves, hogs, or sheep. No return pass to be given.

Second. One man each way in charge of one car of horses or mules.

Third. One man each way in charge of two to five cars of live stock.

Fourth. Two men each way in charge of six to ten cars.

Fifth. Three men each way in charge of eleven or more cars, which is the maximum number that will be passed with stock from one shipper on same train.

Sixth. Return passes for men in charge of horses or mules to be used within thirty days, and for men in charge of other stock within twenty days, after cars arrive at terminal points or destination points on this line, the return passage to be commenced within twenty-four hours after issuance of passage.

Seventh. When two cars of stock are shipped from different stations by the same owner, and are received at destination on same train, man in charge shall be entitled to return pass to station nearest to the market.

Eighth. Women not to be passed in charge of live stock.

Ninth. No return passes will be issued to parties who do not accompany the shipment, and agents and others are required to see to it that in issuing contracts no names are inserted therein but those of the party or parties actually with the stock, and the signatures of the parties whose names are thus inserted must be shown upon the contract as a means of identification.

The stock yards of this company in Chicago are now located at Corwith. The former rates to Chicago found in the tariffs or schedules as applicable to Chicago will only apply to live stock delivered at the stock yards of this company at Corwith in said city.

Upon all live stock consigned to the Union Stock Yards in Chicago and transported and delivered to said Union Stock Yards an additional charge of $2.00 per car will be added to the rates applicable to Corwith for transporting such car to said Union Stock Yards.

276 "Frisco" authority 2154. "Santa Fe" authority { 2773 / 2827 / 3102

"Santa Fe Route."

Atchison, Topeka & Santa Fe Railroad. St. Louis & San Francisco Railway. J. W. Reinhart, John J. McCook, Joseph C. Wilson, receivers. Manhattan, Alma & Burlingame Railway. The Wichita & Western Railway. The Southern Kansas Railway Co. of Texas. Gulf, Colorado & Santa Fe Railway.

Amendment No. 2. Amendment Nos. 1 and 2 contain all changes.

To joint through live-stock tariff, "Santa Fe" No. 547–D. G., C. & S. F. No. 151–A. "Frisco" No. 276–C. (of October 17, 1893.)

F. D. Russell, general freight agent, St. L. & S. F. Ry., St. Louis, Mo.
J. G. Miller, asst. general freight agent, A., T. & S. F. R. R., Chicago, Ill.
L. J. Polk, general freight agent, G., C. & S. F. Ry., Galveston, Tex.
F. C. Gay, general freight agent { A., T. & S. F. R. R., M. A. & B. Ry., The W. & W. Ry., } Topeka, Kas.
J. N. Freeman, gen. frt. agt., The So. Kas. Ry. Co. of Tex., Panhandle, Tex.
Eli Titus, general live-stock agent, A., T. & S. F. R. R., Kansas City Stock Yards, Kansas City, Mo.

Sent to Interstate Commerce Commission June 29, 1894.
Received July 3, 1894. Freight traffic manager, Santa Fe route.

TOPEKA, KAS., *June 29, 1894.*

To agents and others interested:

Taking effect May 16, 1894, the application of St. Louis rates to or from points on the Hannibal & St. Joseph R. R., shown on page 3 of amendment No. 1 to the above-numbered tariff, will be cancelled. (Covered by advice notice No. 1, issued May 9, 1894.)

Taking effect June 1, 1894, a terminal charge of $2.00 per car will be made in addition to the Chicago rates shown in the above-numbered tariff and amendments thereto on live stock received from or delivered to the stock yards located on the tracks of the Union Stock Yards Railway, the Indiana State Line Railway, and the Northern Indiana R. R. (Covered by advice notice No. 2, issued May 23, 1894.)

Taking effect July 15, 1894, rates on horses and mules at stations
277 Index Nos. 23 to 99, 123 to 180, 191 to 215, 233 to 240, 243 to 521, and 532 to 542, inclusive, including stations on the G. C. & S. F. Ry., Wayne to Marinetta, I. T., inclusive, will be $5.00 per car higher than rates shown in tariff.

Taking effect July 15, 1894, cancel rates on horses and mules shown in tariff and advance notice No. 3 at stations named below, and apply the following:

Horses and mules: In dollars and cents per car of standard length.

Index No.	Between.	Mississippi River points.	and Chicago.
1.	Atchison, Kans.....	55.00	75.00
2.	*Parnell, "	55.00	75.00
3.	*Hawthorne, "	55.00	75.00
*	* * * *	*	*
115.	Colony, Kans.....	62.00	82.00
116.	*Carlyle, "	62.00	82.00
117	Iola, "	62.00	82.00

*No agent; freight must be prepaid. For explanation of other reference marks see tariff. Eliminate Dobson, Kas., and Wests, Colo. (Index Nos. 104 and 541), stations abolished.

(Here follows list of numerous stations and of rates therefrom shown after the manner illustrated by immediately foregoing. This list is omitted by agreement in order to shorten the record.)

Ills. Cent. Ex. 1 was read in evidence as follows:

I. C. R. R. G. F. D. No. 3538—J. Cancels G. F. D. No. 3538—I.

ILLINOIS CENTRAL RAILROAD CO.,
GENERAL FREIGHT DEPARTMENT,
Chicago, Ill., April 7, 1897.

Terminal charges at Union Stock Yards (Chicago) and Hammond, Ind.

Agents and connections:

Live stock and all other traffic destained to or coming from the Union Stock Yards, Chicago, and industries located on the tracks of the Union Stock Yards Railway or the Northern Indiana Railroad at Hammond, Ind., will be subject to the following:

Add to the rates in effect to or from Chicago, Ill., terminal charges as follows:

To or from the Union Stock Yards..... To or from other points of delivery on Union Stock Yards Railway.....	$2.00 per car.
278 To or from points of delivery on Indiana State Line R'y ..... To or from points of delivery on Indiana Railroad (all industries at Hammond, Ind.).....	$3.00 per car.

With the following exceptions, viz:

To or from points in Southeastern territory (points south of the States of Kentucky and Virginia and east of the Illinois Central Railroad, East Cairo to Jackson, Tenn., and east of the M. & O. R. R., Jackson, Tenn., to Mobile, Ala.	The rules contained in Chicago and Ohio River Traffic Association Circular No. 245, I. C. R. R. Circular No. 945, or subsequent issues, will govern.
On live stock and all other freight, southbound from the Union Stock Yards proper, destined to points south of the Ohio River on and east of the Mississippi River and west of the above-described Southeastern territory; also to points in Arkansas; points in Texas when routed via New Orleans, and to Pensacola, Fla.	No terminals will be added to the rates from Chicago.
On freight in bond destined to the Union Stock Yards.	A terminal of $4.00 per car will be charged in addition to the rates to Chicago.

Bills of lading covering freight to or from the Union Stock Yards, etc., must provide for the above terminals.

In waybilling shipments destined to or coming from the Union Stock Yards, etc., the terminal charge, if any, must be shown separately in the freight column.

Taking effect April 19, 1897.

W. E. KEEPERS,
General Freight Agent.
GEO. W. BECKER,
Assistant General Freight Agent.
T. J. HUDSON,
Traffic Manager.
W. R. BASCOM,
First Assistant General Freight Agent.
J. R. PEACHY,
Assistant General Freight Agent.
M. C. MARKHAM,
Assistant Traffic Manager.

279 C. B. & Q. Ex. 1 was read in evidence as follows:

Chicago, Burlington & Quincy Railroad.

Chicago, Burlington & Northern R. R., Burlington & Missouri River R. R. in Neb., Hannibal & St. Joseph R. R.—Burlington Route.

St. Louis, Keokuk & North-Western R. R., Kansas City, St. Jo & Council Bluffs R. R., Chicago, Burlington & Kansas City Ry.

JUNE 29, 1894.

To agents and connections:

Taking effect July 9, 1894, the tariffs on live stock and all other traffic received from or delivered to the stock yards at Chicago and all industries located on the tracks of the Union Stock Yards Railway, or the Chicago & Indiana State Line Railway at Chicago, will, in addition to the rates named to or from Chicago, be subject to a terminal charge of $2.00 per car, and on traffic destined to or coming from industries located on the tracks of the Northern Indiana Railroad, at Hammond, Ind., be subject to a terminal charge of $3.00 per car.

Agents will be careful in issuing live-stock contracts or bills of lading or shipments destined to the stock yards or industries located at Chicago or Hammond on the lines named to see that the terminal charges above named are inserted in the bill of lading or live-stock contract in addition to the through rate to Chicago.

The forwarding agents will also show on the waybill these terminal charges in addition to the charges to Chicago proper.

The foregoing will apply as an amendment to all tariffs naming rates

to or from Chicago issued by the above-named railroads; also to all joint tariffs issued by connections and applying over these lines.

THOS. MILLER,
General Freight Agent, C. B. & Q. R. R., Chicago, Ill.

HOWARD ELLIOTT,
G. F. A., St. L., K. & N. W. H. & St. J. K. C. St. J. & C. B. R. R.'s, and C. B. and K. C. R'y, St. Louis, Mo.

W. J. C. KENYON,
General Freight Agent, C. B. & N. R. R., St. Paul, Minn.

GEO. H. CROSBY,
General Freight Agent, B. & M. R. R. in Neb., Omaha, Neb.

280 The Wabash R. R. Ex. 1 was read as follows:

THE WABASH RAILROAD COMPANY,
GENERAL FREIGHT DEPARTMENT.

Instructions No. 518. (Cancels instructions Nos. 459 and 459-A.)

ST. LOUIS, MO., *January 15, 1896.*

To agents and connections west of Ind.-Ill. State line and west of the Mississippi River:

On and after February 1st, 1896, live stock and all other traffic between points west of the Ind.-Ill. State line and the Union Stock Yards or industries located on tracks of the Union Stock Yards and Transit Company, Indiana State Line Railway, or the Northern Indiana R. R. at Hammond, Ind., will be subject to a charge of $2.00, except that live-stock shipments, to or from Hammond, Ind., will be subject to a charge of $3.00 per car in addition to the published tariff rate to or from Chicago, Ill. The above also includes all shipments of hay, grain supplies, or material consigned to the Union Stock Yards and Transit Company or to John B. Sherman for the use of that company.

These instructions are to be construed as amending all tariffs issued by this company; also joint tariffs issued by connections or associations in the territory described.

Please be governed accordingly.

S. B. KNIGHT,
General Freight Agent.

281 Wabash No. 18586–C.

Amendment No. 3 to I. C. C. No. 480, including Wabash 18586–A and B.

Reissue of and superseding portions of Circular No. 227.

Cancels instructions Nos. 337, 437, 448, 495, 510, 518, 531, 535, 553, 582, 586, 591, 603, 608, 612–B, 617, 618, 620, 621, 628, 633, 634, 1000.

THE WABASH RAILROAD CO., GENERAL FREIGHT DEPARTMENT.

Restrictions governing the acceptance of freight. Effective March 8, 1899.

Issued by S. B. Knight, Gen'l Freight Agent, Wabash R. R. P. W. Coyle, Ass't Gen'l Freight Agent, Wabash R. R., St. Louis, Mo.

Item No.	Location.	Consignee.	Shipments.	Requirements or restrictions.	Notice from
79	Akron, O	Alexander Liver & Kidney Tonic Co. W.W. Alexander and Root-Tea-No Herb Co.	Return shipments of medicine.	All freight and charges must be prepaid. (See Note 1.)	
80	Akron, O	American Cereal Co..	Return shipments of sacks.	Each bundle must be plainly marked with both the shipper's name and address.	
81	Boston, Mass..	H. J. Heinz Co.....	Returned empty barrels.	All freight and charges must be prepaid.	Fitchburg R. R.
82	Cambridge, or Cambridgeport, Mass.	Nat'l Biscuit Co., or N. Y. Biscuit Co.	Returned empty packages.	Waybill to and load for Boston proper.	Fitchburg R. R.
83	Constantine, Mich.	Constantine Casket Co.	Return shipments of empty casket boxes.	All freight and charges must be prepaid.	L. S. & M. S. Ry.
84	Defiance, O...	Linthicum-Schlösser Carriage Co.	Return shipments of vehicles or parts thereof.	All freight and charges must be prepaid.	Wabash R. R.
85	Detroit, Mich.	Goebel Brewing Co...	Return empty beer packages.	All other charges except regular freight charges must be prepaid.	L. S. & M. S. Ry.
86	Detroit, Mich.	Globe Cash Register Co.	Return shipments of cash registers	All freight and charges must be prepaid.	Consignees.
87	Erie, Pa	Artherholt Co	Returned empty casks or crockery packages.	Shipments will not be received with or without charges.	L. S. & M. S. Ry.
88	Gardner, Mass	Central Oil and Gas Stove Co.	.....	Waybills for all goods consigned Central Oil and Gas Stove Co., Gardner, Mass., or to that firm's order, or to order notify that firm, must show the station from which the traffic was originally consigned, and State in which the station is located. Also name of consignor.	Fitchburg R. R.
282					325
89	Hamilton, O..	F. and L. Kahn & Bro.	Returned stoves or stove furniture.	May be accepted without prepayment of freight & charges.	C., H. & D. R. R.
90	Harrison, N.J.	Geo. Campbell & Co..	Bark	All freight and charges must be prepaid.	Empire Line.

Item No.	Location.	Consignee.	Shipments.	Requirements or restrictions.	Notice from
91	Kansas City, Mo.	John Deere Plow Co. Keystone Implement Co. Buford & George Mfg. Co. Rock Island Implement Co. Columbus Buggy Co. Kansas Moline Plow Co. Nichols & Shepard Co. Standard Implement Co. Crane Company D. M. Osborne & Co. Gale Manufacturing Co. Advance Thresher Co Parlin & Orendorff Co. Stutz & Walker Creamery Package Co. Wm. Deering Co. Trumbul, Stean & Allen Seed Co. Bonniwell, Newman & Calvin. The English Supply and Engine Co. Kingman & Co Walter A. Wood Harvester Co. Geo. W. Brown & Co. Kansas City Pump Co. Whitman & Barnes Mfg. Co. Eagle Manufacturing Co. McFarland Carriage Co. Bradley, Wheeler & Co. Aultman, Miller & Co Studebaker Bros. Mfg. Co Plano Manufacturing Co Avery Planter Co. Gille Hardware & Iron Co Fairbanks, Morse & Co Racine Wagon and Carriage Co. Henney Buggy Co. The Aultman & Taylor Machinery Co. J. G. Peppard Sandwich Mfg. Co. Kansas City Hay Press Co Snodgrass & Young Mfg. Company. Richard & Conover Hardware Co. McCormick Harvesting Mfg. Co. U. S. Water and Steam Supply Co. Minnesota Thresher Machinery Co. G. J. Ferguson Oliver Chilled Plow Works.	Return shipments	Shipments will not be received except when returned by their order, which order must be presented by the consignor, or unless consignor prepays all freight charges thereon.	Wabash R.R.
92	Monmouth, Ill Nacoma, Ill White Hall, Ill	All firms	Returned shipments of stoneware.	All freight and charges must be prepaid.	C., B. & Q. R.R.
93	Owosso, Mich.	Estey Mfg. Co	Return shipments of burlap.	Name of shipper and original point of shipment must be shown in full.	A. A. R. R. M. C. Ry. Grand Trunk Ry.
94	Owosso, Mich.	Woodward Furniture Works.	Return shipments of burlap.	All freight and charges must be prepaid.	G. T. Ry.
95	South Bend, Ind.	Economist Plow Co. Syracuse Chilled Plow Co.	Returned shipments of plows.	All freight and charges must be prepaid.	L. S. & M. S. Ry.
96	Toledo, O.	B. A. Stevens	Return shipments of sausage casings.	All freight and charges must be prepaid.	M. C. R. R. Wabash R. R.
97	Waverly, N.Y.	Halls & Lyons Furniture Co.	Return shipments of burlap.	All freight and charges must be prepaid.	Empire Line.

Item No.	Notice issued by—	Shipments.	Restrictions or requirements.
98	B. & O. R. R.	Shipments of hydrofluoric acid.	Shipments will be received if same are shipped in lead packages or barrels lined with a preparation of gutta-percha and beeswax. If not so shipped, same will be accepted on regular oil-shipping days, when same can be shipped in regular oil-carrying cars.
99	C. & E. I. R. R.	Shipments of grain.	To junction agents and connections the Wabash R. R. Co.: The C. & E. I. R. R. have given notice that on and after Oct. 10, 1895, grain of all kinds, except oats, loaded in cars furnished by that company must be loaded to within 2,000 pounds of their marked capacity, and their charges on grain of all kinds, oats excepted, will be assessed on basis of actual weight, subject to a minimum of 2,000 pounds less than the stenciled capacity of the car. The minimum on oats will be: 36-ft. cars, 44,000 pounds; 34 and 33 ft. cars, 32,000 pounds; 30 and 28 ft. cars, 28,000 pounds. The above ruling will apply on grain originating at C. & E. I. stations and these instructions will be in the nature of an amendment to all joint tariffs of the C. & E. I. road naming rates on grain.
100	Erie R. R.	Shipments of race horses.	Must be prepaid in full when destined to following points: Latonia, or Millidale, Ky., for the Latonia Race Track. Newport, Ky., for the Queen City Race Track or the Newport Race Track. Oakley, Ohio, for the Oakley Race Track.
101	G. R. & I. Ry.	Return shipments of butter tubs, poultry, frog, or egg cases, potato stoves, oyster pails.	All freight and charges must be prepaid.
102	N. Y., L. E. & W. Ry.	Shipments of live stock.	Shipments of live stock will not be received for transportation when consigned "To order or notify" or in any other manner where it will be necessary to hold property at destination for bills of lading or instructions from shippers. All live stock must be consigned direct to the party or parties who are to receive same at destination.
103	N. Y., N. H. & H. R. R.	Shipments of dairy freight.	Refrigerator cars loaded with dairy freight will not be accepted unless they contain 10,000 pounds or more of freight for one destination, and it being impossible to consolidate small shipments so as to comply with this requirement without delay or loss of property. Agents of this company must refuse to receive from shippers or connecting roads any shipment of dairy freight for points on or reached via N. Y., N. H. & H. R. R., unless in lots of 10,000 pounds or over, consigned to one destination.
104	Pacific Mail, etc.	Cartridges, etc.	The Pacific Mail, Occidental and Oriental, and Toyo Kisen Kabushika Kaisha (Oriental S. S. Co.) steamship lines advise that they will not handle shipments of cartridges, fireworks or primers, or other explosives, or kerosene, petroleum, or other highly inflammable articles.
105	Southern Pacific system.	Shipments emigrant movables, household goods, or personal effects.	All freight and charges must be fully prepaid or guaranteed from initial point to final destination.
106	Wis. Cent. lines.	Return shipments of car linings and stoves.	Shipments will not be received where the charges aggregate $15.00 and upwards, as these charges are in excess of the value of the commodity. Also, through billing will not be accepted where there are advance charges on same for return of these shipments. This on account of consignees refusing to pay charges. 326

Item No.	284	Restrictions or requirements.
107	Bicycles sent to manufacturer for repairs.	Until further notice you will refuse to accept for shipment any bicycles or bicycle parts to be sent to manufacturers for replacement or repairs, or any other purpose, unless all charges are fully prepaid.
108	Charge on live stock, hay, grain, supplies, or material between Hammond, Ind., and Chicago, Ill.	To agents and connections west of Ind.-Ill. State line and west of the Mississippi River: On and after February 1st, 1896, live stock and all other traffic between points west of Ind.-Ill. State line and the Union Stock Yards or industries located on tracks of the Union Stock Yards and Transit Company, Indiana State Line Railway or the Northern Indiana R. R. at Hammond, Ind., will be subject to a charge of $2.00, except that live-stock shipments to or from Hammond, Ind., will be subject to a charge of $3.00 per car in addition to the published tariff rate to or from Chicago, Ill. The above also includes all shipments of hay, grain, supplies, or material consigned to the Union Stock Yards and Transit Company or to John B. Sherman for the use of that company. These instructions are to be construed as amending all tariffs issued by this company, also joint tariffs issued by connections or associations in the territory described.
109	New York game laws.	Under the game laws of the State of New York, hares and rabbits can not be killed, sold, or held in possession from February 1st to October 1st. Agents must not receive this class of freight during the period named for shipment to the said State of New York.
110	Cars consigned "To order" waybills to show names and addresses of parties to be notified thereon.	Cars consigned "To order" must show on the waybills and card manifests the names and addresses of the parties to be notified.
111	Cars loaded in excess of marked capacity.	The maximum weight of carload freight has been fixed at 10 per cent over the marked capacity of the car. Where not otherwise marked, 30,000 lbs. will be considered the capacity of the car. When cars are loaded by shippers to exceed above maximum allowance, transfer to cars of greater capacity will be required and all expenses of transfer will be added to waybills at points of transfer and shown in expense bills as separate items. Connecting line weights: The lines members of the Western Railway Weighing Association have established the following ruling: All cars received from connecting lines at Chicago, Peoria, or St. Louis where the stamp of the Joint Rate and Inspection Bureau shows the gross, tare, and net weight, these cars will be passed without reweighing, and notation "Connecting Line Weight" should be made on waybills. On carload freight received from any connecting line that has not been weighed under the auspices of the Joint Rate Inspection Bureau, and where the connecting lines show a weight within 500 pounds of the weights as ascertained on the scales of the Western Weighing Association the weight of the connecting line shall be accepted. Scale weight on carload freight: On carload freight not weighed before being loaded, weight, as ascertained on track scales, shall be charged for and collected. Minimum carload weights of grain: Equipment furnished by this company for transportation of grain should in all cases be loaded to the full stenciled or marked capacity. Railroad carriers within the territory of the Joint Traffic and Central Freight associations require shippers of grain from points on their several lines to load all cars ordered by them for grain shipments to within 10 per cent of their marked capacities.

285 C. & G't Wes. Ex. 1 was read, as follows:

CHICAGO GREAT WESTERN RAILWAY,
GENERAL FREIGHT DEPARTMENT.

To agents and connections:

Taking effect July 9, 1894, the tariffs on live stock and all other traffic received from or delivered to the Union Stock Yards, and all industries located on the tracks of the Union Stock Yards Railway or the Indiana State Line Railway, will, in addition to the rates named to or from Chicago, be subject to a terminal charge of $2 per car, and $3 per car on shipments received from or delivered to the Northern Indiana R. R. at Hammond.

This charge must in all cases be added to the through rate, and must be shown separately on the waybill, in freight-charge column, as a delivering expense; it must be also provided for and shown in live-stock contracts and bills of lading.

The foregoing will apply as a supplement to all tariffs issued by this company, also to all joint tariffs issued by connections and applying over this line.

F. H. TIBBITS,
Assistant General Freight Agent, Chicago, Ill.
C. R. BERRY,
Assistant General Freight Agent, St. Joseph, Mo.
P. C. STOHR,
General Freight Agent, St. Paul, Minn.
S. O. BROOKS,
Assistant General Freight Agent, St. Paul, Minn.

CHICAGO GREAT WESTERN RAILWAY,
GENERAL FREIGHT DEPARTMENT.

To agents and connections:

Taking effect June 1, 1894, the tariffs on live stock and all other traffic received from or delivered to the Union Stock Yards, and all industries located on the tracks of the Union Stock Yards Railway, the Indiana State Line Railway, or the Northern Indiana R. R. at Hammond, Ind., will, in addition to the rates named to or from Chicago, be subject to a terminal charge of $2 per car.

This charge must in all cases be added to the through rate, and must be shown separately on the waybill, in freight-charge column, as a delivering expense; it must also be provided for and shown in live-stock contracts and bills of lading.

The foregoing will apply as a supplement to all tariffs issued by
286 this company, also to all joint tariffs issued by connections and applying over this line.

F. H. TIBBITS,
Assistant General Freight Agent.
C. R. BERRY,
Assistant General Freight Agent, St. Joseph, Mo.
P. C. STOHR,
General Freight Agent, St. Paul, Minn.
S. O. BROOKS,
Assistant General Freight Agent, St. Paul, Minn.

C., R. I. & P. Ex. 1 was read as follows:

Chicago, Rock Island & Pacific Railway; Chicago, Rock Island & Texas Railway; Rock Island & Peoria Railway; Kankakee & Seneca Railway; Burlington, Cedar Rapids & Northern Railway; Minneapolis & St. Louis R'y (W. H. Truesdale, receiver); Des Moines Northern & Western Railway; Des Moines & Kansas City Railway; Omaha & St. Louis Railway; Wabash Railroad.

Joint circulars.

Taking effect June 1st, 1894, the tariffs on live stock and all other traffic received from or delivered to the stock yards, and all industries located on the tracks of the Union Stock Yards R'y, the Indiana State Line R'y,

or the Northern Indiana R. R. at Hammond, Ind., will, in addition to the rates named to or from Chicago, be subject to a terminal charge of $2 per car.

The foregoing will apply as an amendment to all tariffs issued by this company, also to all joint tariffs issued by connections and applying over this line.

Shipments of soft coal will, until further notice, be excepted from the foregoing.

W. M. SAGE,
Traffic Manager, Chicago, Ill.
R. STOCKHOUSE,
G. F. A., R. I. & P. R'y, Rock Island, Ill.
W. M. HOPKINS,
G. F. A., M. & St. L. R'y, Minneapolis, Minn.
J. F. BARNARD,
Receiver O. & St. L. R'y, Council Bluffs, Ia.
J. M. JOHNSON,
G. F. A., C., R. I. & P. R'y Lines East of the Mo. River, Chicago, Ill.

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A. S. WHITE,
G. F. A. K. & S. Ry., Cincinnati, O.
J. N. TITTEMORE,
G. F. A. D. M., N. & W. Ry., Des Moines, Ia.
J. C. MCCABE,
G. F. A. D. M., N. & W. Ry., Fort Worth, Tex.
D. ATWOOD,
G. F. A. C., R. I. & P. Ry. Lines West of the Mo. River, Topeka, Kans.
T. H. SIMMONS,
G. F. A. B., C. R. & N. Ry., Cedar Rapids, Ia.
T. C. SHERWOOD,
G. F. A. D. M. & K. C. Ry., Des Moines, Ia.
S. B. KNIGHT,
G. F. A. Wabash R. R., St. Louis, Mo.

Chicago, Rock Island & Pacific Railway.—Chicago, Rock Island & Texas Railway; Rock Island & Peoria Railway; Kankakee & Seneca Railway; Burlington, Cedar Rapids & Northern Railway; Minneapolis & St. Louis Ry. (W. H. Truesdale, receiver); Des Moines, Northern & Western Railway; Des Moines & Northern & Western Railway; Des Moines & Kansas City Railway; Omaha & St. Louis Railway; Wabash Railroad.

Joint circular.

Referring to C., R. I. & P. G. F. D. No. 1781–A, providing for a charge of $2.00 per car in addition to the regular rate to Chicago on shipments of live stock and all other traffic received from or delivered to the stock yards and all industries located on the tracks of the Union Stock Yards Railway, the Indiana State Line Railway, or the Northern Indiana Railroad at Hammond, Ind.

Agents must understand that in issuing live-stock contracts bills of lading or shipping receipts for shipments of freight consigned to the Union Stock Yards, Chicago, the charge of $2.00 must be inserted therein in addition to the tariff rate to Chicago.

W. M. SAGE,
Traffic Manager C., R. I. & P. Ry., Chicago, Ill.
R. STOCKHOUSE,
G. F. A. R. I. & P. Ry., Rock Island, Ill.
W. M. HOPKINS,
G. F. A. M. & St. L. Ry., Minneapolis, Minn.
288
J. M. JOHNSON,
G. F. A. C., R. I. & P. Ry. Lines East of the Mo. River, Chicago, Ill.
A. S. WHITE,
G. F. A. K. & S. Ry., Cincinnati, Ohio.
J. N. TITTEMORE,
G. F. A. D. M., N. & W. Ry., Des Moines, Ia.
D. ATWOOD,
G. F. A. C., R. I. & P. Ry. Lines West of the Mo. River, Topeka, Kans.
T. H. SIMMONS,
G. F. A. B., C. R. & N. Ry., Cedar Rapids, Ia.
T. C. SHERWOOD,
G. F. A., D. M. & K. C. Ry., Des Moines, Ia.

Chicago, Rock Island & Pacific Railway.—Chicago, Rock Island & Texas Railway; Rock Island & Peoria Railway; Kankakee & Seneca Railway; Burlington, Cedar Rapids & Northern Railway; Minneapolis & St. Louis Ry. (W. H. Truesdale, receiver); Des Moines, Northern & Western Railway; Des Moines & Kansas City Railway; Omaha & St. Louis Railway; Wabash Railroad.

Joint circular.

Switching charges at Union Stock Yards and Hammond, Ind.

Taking effect July 9, 1894, charges as follows must be made in addition to the regular tariff rates on all carload shipments of freight, including carloads of live stock, received from or delivered to industries located on the tracks of the following roads:

Union Stock Yards Ry., Chicago, $2.00 per car.
Indiana State Line Ry., Chicago, $2.00 per car.
Northern Indiana Ry., Hammond, Ind., $3.00 per car.

This will not have the effect of reducing the additional charge at present added to tariff on carload shipments to or from stations on this company's line east of Joliet.

The above will apply as an amendment to all tariffs issued by this company, also to all joint tariffs issued by connections and applying over this line.

Agents must understand that in issuing live-stock contracts, bills of lading, or shipping receipts for shipments of freight consigned to or com-

ing from industries specified, the charges shown above must be inserted therein in addition to the tariff rate to or from Chicago.

W. M. SAGE,
Traffic Manager C., R. I. & P. Ry., Chicago, Ill.

289 R. STOCKHOUSE,
G. F. A. R. I. & P. Ry., Rock Island, Ill.

W. M. HOPKINS,
G. F. A. & St. L. Ry., Minneapolis, Minn.

J. F. BARNARD,
Receiver O. & St. L. Ry., Council Bluffs, Ia.

J. M. JOHNSON,
G. F. A. C., R. I. & P. Ry., Lines East of the Mo. River, Chicago, Ill.

A. S. WHITE,
G. F. A. K. & S. Ry., Cincinnati, O.

J. N. TITTEMORE,
G. F. A. D. M., N. & W. Ry., Des Moines, Ia.

J. C. MCCABE,
G. F. A. C., R. I. & T. Ry., Fort Worth, Tex.

D. ATWOOD,
G. F. A. C., R. I. & P. Ry., Lines West of the Mo. River, Topeka, Kans.

T. H. SIMMONS,
G. F. A. B., C. R. & N. Ry., Cedar Rapids, Ia.

T. C. SHERWOOD,
G. F. A. D. M. & K. C. Ry., Des Moines, Ia.

S. B. KNIGHT,
G. F. A. Wabash R. R., St. Louis, Mo.

File No. 19442.

Chicago, Rock Island & Pacific Railway through freight tariff on live stock.

Carloads between Chicago, Peoria, Mississippi River points, St. Paul, Minneapolis, Minnesota Transfer, Minn., and common points named in C., R. I. & P. G. F. D. No. 69, or subsequent issues, and stations in Kansas, Nebraska, Indian and Oklahoma Territories, and Colorado, on the Chicago, Rock Island & Pacific Railway, Hutchinson & Southern Railroad, and Choctaw Coal & Railway Company. Taking effect July 15th, 1894. See special instructions, pages 12 and 13. Subject to the current Western classification, except as otherwise provided within. Waybill through as shown herein.

W. M. Sage, traffic manager C., R. I. & P. Ry., Chicago, Ill.

J. M. Johnson, G. F. A. C., R. I. & P. Ry. (lines east of Mo. River), Chicago, Ill.

290 D. Atwood, G. F. A. C., R. I. & P. Ry. (lines west of Mo. River), Topeka, Kan.

L. F. Kimball, 1st A. G. F. A. C., R. I. & P. Ry. (lines west of Mo. Riv.), Denver, Col.

J. F. Holden, traffic manager C. C. & Ry. Co., So. McAllester, I. T.

C. W. Cook, G. F. A. I., I. & I. R. R., Kankakee, Ill.

T. H. Simmons, genl. frt. agent B., C. R. & N. Ry., Cedar Rapids, Ia.

A. S. White, genl. frt. agent K. & S. Ry., Cincinnati, O.
R. Stockhouse, genl. frt. agent R. I. & P. Ry., Rock Island, Ill.
F. W. Evatt, genl. frt. agent Q., O. & K. C. Ry., Quincy, Ill.
Byron Roberts, receiver, H. &. S. R. R., Hutchinson, Kan.
W. M. Hopkins, genl. frt agent M. & St. L. Ry., Minneapolis, Minn.

Index No.	Between Chicago and points taking same rates as shown in C., R. I. & P. G. F. D., No. 69; B., C. R. & N. Cir., No. 4369; R. I. & P. G. F. D., No. 356; K. & S. T. D., No. 826, or subsequent issues.	Horses and mules per standard car.	In cents per 100 lbs.		
			Cattle.	Hogs.	Sheep.
1	Albright, Neb	75.00	†25	†22	†25
2	Gates, "	75.00	†25	†22	†25
3	Richfield, "	75.00	†25	†22	†25
4	Meadow, "	75.00	†26	†27	30
5	South Bend, "	75.00	†26	†27	30

(Here follows list of all the stations on the Chicago, Rock Island & Pacific Railway system and of the rates from those stations by various routes to Chicago, shown after the manner indicated by the illustrations immediately preceding. These lists are omitted by agreement in order to shorten the record.)

Special instructions.

1. Mixed stock: Mixed shipments of live stock may be received for transportation subject to the following rules (except when in conflict with State laws):

(a) Each class of stock to be separated by good and sufficient partition, which shall be fastened to the car without the use of nails
291 or spikes, or any other fastening which will injure or deface the car.

(b) "The rates on mixed carloads of live stock so received to be the highest rate for any grade of stock in the car, subject to the highest carload minimum weight, where the rates are in cents per 100 lbs., and to the authorized percentages applying on the cars of different lengths where the rates are in dollars per car."

(c) On shipments of live stock when loaded in palace cars having permanent stalls the rate on the highest class will govern.

(b) Rates on range cattle will apply on range cattle and cow ponies.

2. The rates shown in this tariff will be valid only when the shippers execute the proper live-stock release on regular stock contract, and will apply on shipments carried in ordinary or palace stock cars. Any extra charge on palace stock cars, such as rental, etc., must be paid by the shipper or consignee, the railroad company agreeing only to haul the palace cars at same rate as common cars.

3. Minimum weights: Where the rates named herein are in cents per 100 lbs. the following minimum weights will apply on shipments in either common or palace cars:

In cars measuring inside—	Cattle.	Hogs.		Sheep.	
		Single deck.	Double deck.	Single deck.	Double deck.
	Lbs.	*Lbs.*	*Lbs.*	*Lbs.*	*Lbs.*
31 feet and under	19,000	15,000	19,000	10,000	19,000
33 feet 9 inches and over 31 feet	20,500	16,000	20,500	11,000	20,500
Over 33 feet 9 inches	22,000	17,000	22,000	12,000	22,000

4. Application of rates shown in dollars and cents per car: When the rates named herein are in dollars and cents per car, such rates will apply on live stock in standard cars (common or palace), viz, 29 feet to and including 30 feet 6 inches, inside measurement.

Cars of other dimensions will be subject to following charges:

In cars inside measurement of which is—

Less than 29 ft.	Over 30 ft. 6 in. to and includ'g 32 ft.	Over 32 ft. to and includ'g 33 ft. 6 in.	Over 33 ft. 6 in. to and includ'g 36 ft.	Over 36 ft.
94 per cent of rates shown.	104 per cent of rates shown.	107 per cent of rates shown.	110 per cent of rates shown.	Same rate as for 36-ft. car, plus 1 per cent of standard car rate for each 2 ft. or fraction thereof over 36 ft.

292 5. Passage of men in charge of live stock.

(a) Pass one man in charge of one car of cattle, hogs, or sheep; no return pass.

(b) Pass one man each way in charge of one car of horses and mules.

(c) Pass one man each way in charge of two to five cars of live stock.

(d) Pass two men each way in charge of six to ten cars of live stock.

(e) Pass three men each way in charge of eleven or more cars of live stock, which is the maximum number that will be passed with stock from one shipper on same train.

(f) Return passes for men in charge of horses and mules to be presented within 30 days, and of other stock within 20 days, after arrival of cars at terminal point or destination point on lines parties to this tariff, and the return passage to be commenced within 24 hours after issuance of passes.

(g) Women not to be passed in charge of live stock.

(h) No return pass will be issued to parties who do not accompany the shipment, and agents and others are required to see to it that in the issuance of the contracts no names are inserted therein but those of the party or parties actually with the stock, and the signatures of the parties whose names are thus inserted must be shown upon the contracts as a means of identification.

6. Limitation of liability: The rates shown herein will apply only on shipments made at owner's risk, with limitation of liability on the part of the railroad company as common carrier under the terms and conditions of the current live-stock contract provided by said company, the contract to be first duly executed in manner and form provided for therein.

Double the rates named will be charged on shipments made without limitation of carrier's liability at common law, and under this status shippers will have the choice of executing and accepting contracts for shipments of live stock with or without limitation of liability, the rates to be made as provided for above.

7. Owners of live stock must care for shipments, while on the way, at their own expense and risk, and the expense of feeding and watering, if advanced by any of the lines over which the shipments pass, must be paid on delivery at destination, by owner or consignee, in addition to contract rate.

8. Agents at the station from which live stock is waybilled must in all cases note on billing the length of car in which stock is loaded, and must in all cases give the full name of shipper on each waybill.

293 9. Agents must see that the doors, crossbars, and floors of bars are in perfect order. They must count the stock in the pens as it is being loaded, and enter on stock contracts and waybill the number loaded in each car, adding in full the words "more or less." They will render the shipper all the assistance within their control, but must not permit the stock to be unduly crowded in the car.

10. Furnishing stock cars: The different sizes of stock cars will be furnished as near as possible in accordance with shippers' orders. Agents will not guarantee to furnish any particular size of cars, and will waybill at full tariff rates, according to the size of the cars used. If shippers desire double-decked cars, the lines parties hereto reserve the privilege of furnishing single-deck cars, to be fitted with an upper deck at the expense of shipper and according to instructions given by agent, the company being fully guaranteed that the cars will be left in as good condition as when same were furnished. Shippers or owners must assume all liability of damage to stock that may be occasioned by the extra decks placed in such cars.

11. From and to stations where there are no stock yards or loading chutes, the rates as shown herein will apply only when the shippers furnish the necessary appliances for loading or unloading the stock, which must be done at their own expense and risk.

Rates named in this tariff will only apply between the depots of the companies, or to and from their own side tracks; deliveries at places other than the established depots, or any extra switching, may entail additional expense.

Shipments for U. S. yards, etc. Charges as follows must be made in addition to the regular tariff rates on all carload shipments of freight, including carloads of live stock, received from or delivered to industries located on the tracks of the following roads:

Union Stock Yards Ry., Chicago, $2.00 per car.

Indiana State Line Ry., Chicago, $2.00 per car.

Northern Indiana R. R., Hammond, Ind., $3.00 per car.

Agents must understand that in issuing live-stock contracts, bills of lading, or shipping receipts for shipments of freight consigned to or coming from industries specified, the charges shown above must be inserted therein in addition to the tariff rate to or from Chicago.

The rates between intermediate stations must not be higher than the rates given in this tariff.

294 C., M. & St. P. Ex. 1 was read as follows:

EXHIBIT No. 1.

G. F. D. No. 10087. Cancelling G. F. D. No. 9839.

Chicago, Milwaukee & St. Paul Railway.

General freight department. Terminal charges at Chicago Union Stock Yards, Ill.; Hammond, Ind., etc.

In addition to the rates named to or from Chicago, on live stock and all other carload traffic. Effective August 3, 1894.

Between Chicago, Ill., and—	Rates in dollars per car.
Union Stock Yards, Ill.:	
Industries located on tracks of Union Stock Yards & Transit Co. and the Indiana State Line Ry	2.00
Hammond, Ind.:	
Industries located on the Northern Indiana R. R	3.00

This charge must be entered separately by waybilling agent in freight charges column of waybill; also on bill of lading and live-stock contract.

Foreign forwarding lines must see that the foregoing requirements are complied with, otherwise the terminal charge will be added by this company before delivery.

A. C. BIRD,
Freight Traffic Manager, Chicago.
N. J. GOLL,
Asst. Genl. Freight , Chicago.
J. J. COLEMAN,
Asst. Genl. Freight Agent, L. S. Div., Milwaukee.
J. H. HILAND,
General Freight Agent, Chicago.
D. C. JONES,
Asst. Genl. Freight Agent, St. Paul.
D. W. KEYES,
First Asst. Genl. Freight Agent, Milwaukee.
E. S. KEELEY,
Asst. Genl. Freight Agent, Chicago.

295 G. F. D. No. 10464. Cancelling G. F. D. No. 3445 and conflicting portions of C. M. & St. P., G. F. D. No. 4760, M. & N. Nos. 122-D and 123-D.

Chicago, Milwaukee & St. Paul Railway.

Tariff on live stock, in carloads, between Chicago, Milwaukee or Racine, and stations in Illinois, Wisconsin, and Michigan. Issued October 12, 1894. Effective October 18, 1894.

Agents are prohibited from quoting or using a higher rate for a shorter than for a longer distance, over the same line, in the same direction, the shorter being included within the longer distance.

A. C. Bird, freight traffic manager, Chicago.
N. J. Goll, ass't gen'l freight agent, Chicago.
J. J. Coleman, ass't gen'l freight agent L. S. Div., Milwaukee.
J. H. Hiland, general freight agent, Chicago.
D. C. Jones, ass't gen'l freight agent, St. Paul.
D. W. Keyes, first ass't gen'l freight agent, Milwaukee.
E. S. Keeley, ass't gen'l freight agent, Chicago.

Between—	And Chicago. In cents per 100 pounds. Cattle.	Hogs.	Sheep.
Hermosa, Ill	....	....	....
Cragin	....	....	....
Dunning	4	6	6
Mont Clare	4	6	6
Franklin Park	4	6	6
Mannheim	5	7	7
Bensenville	6.2	7.5	7.6
Salt Creek	6.2	7.5	7.6
Itasca	6.5	8	8.4

Between—	And Milwaukee or Racine. In cents per 100 pounds. Cattle.	Hogs.	Sheep.
Hermosa, Ill	7	7.5	9
Cragin	7	7.5	9
Dunning	7.5	10	10
Mont Clare	7.5	10	10
Franklin Park	8	10	10
Mannheim	8	10	10
Bensenville	8.5	11	11
Salt Creek	8.5	12	12
Itasca	8.5	12	12

296 (Here follow lists of numerous stations and of rates therefrom, shown after the manner illustrated by immediately foregoing. These lists are omitted by agreement in order to shorten the record.)

Horses and mules in carloads: The rates on horses or mules, carloads, will be 110 per cent of the full tariff rates on cattle in carloads, except to or from points shown below:

Between Chicago, Milwaukee, or Racine, and—	Horses or mules, carloads. In dollars and cents per car.
La Crosse ..... Wis.	
Onalaska ..... "	
Bridgeport ..... "	..... $45.00
Prairie du Chien ..... "	

Above rate on horses or mules, C. L., will apply upon shipments loaded in cars 29 feet, but not exceeding 30 feet 6 inches in length, internal measurement. Upon cars of greater or less measurement, as the case may be, the following will govern:

Horses and mules, in cars less than 29 feet, 94 per cent of the above rate.

Horses and mules, in cars over 30 feet six inches to and including 32 feet, 104 per cent of the above rate.

Horses and mules, in cars over 32 feet to and including 33 feet 6 inches, 107 per cent of the above rate.

Horses and mules, in cars over 33 feet 6 inches to and including 36 feet, 110 per cent of the above rate.

Following minimum weights will govern between points named in this tariff:

	Cattle, also hogs and sheep in D. D. cars.	Hogs S. D.	Sheep S. D.
Cars 31 ft. and under in length, inside measurement	19,000	15,000	10,000
Cars over 31 ft., to, but not in excess of 33 ft. 9 in. in length, inside measurement	20,500	16,000	11,000
Cars over 33 ft. 9 in. in length, inside measurement	22,000	17,000	12,000

When live stock (except horses and mules) originates at and is destined to a point where there are no track scales, it must be billed on basis of minimum weights above provided, unless shipper's weights are
297 greater, in which case it must be billed at such latter weights, subject to correction. This rule will also apply where it may be impossible from any cause to obtain scale weights.

Shipments or mixed cars of live stock may be accepted for interstate shipment, subject to the following rules:

A strong partition must be put in the car at the expense of shipper in order to separate the different kinds of stock, and this must be fastened to the car without the use of nail, spike, or any other fastening which will mar or deface the car. Agent must examine all cars and see that this rule is complied with.

The rate to be applied to such mixed shipment will be the highest rate provided for any class of stock in the car and subject to highest minimum weights provided for any class of stock in the car. For example: On a mixed load of cattle and hogs use cattle or hog rate, whichever may be the higher, and cattle minimum weight. For rules applying locally in Wisconsin see special instructions.

The rates shown in this tariff apply on shipments made in palace stock cars, subject to minimum weights based on their lengths as given in rules on page 10, and further conditions of current issues governing shipments in cars exceeding 36 feet in length, but will not cover such charges as owners of such cars may make for their use. Particulars as to these rentals will be obtained on application to division freight agent.

The rates given in this tariff apply subject to all conditions named above and further conditions shown in limited liability stock contract, Form 71, which contract must be executed in triplicate and signed by both shipper and agent before the live stock departs from the station. The original must be forwarded to the freight auditor, the duplicate delivered to the shipper, and the triplicate filed with station records.

Receipt No. 129. G. F. D. No. 10770. Cancelling G. F. D. No. 9872.

Chicago, Milwaukee & St. Paul Railway: Tariff on live stock in carloads between Chicago, Milwaukee, or Racine, and stations in Missouri, Iowa, Minnesota, North Dakota, and South Dakota. Issued November 20, 1894. Effective December 1, 1894.

NOTE.—In addition to rates provided for herein, a terminal charge of

of $2.00 per car will be made by this company on live stock received from or delivered to the Chicago Union Stock Yards, and $3.00 per car when to or from Hammond, Ind., via Northern Indiana R. R.

This charge must be entered separately by waybilling agent in freight-charges column of waybill, also on live-stock contract.

298 Agents are prohibited from quoting or using a higher rate for a shorter than a longer distance over the same line in the same direction, the shorter being entirely included within the longer distance.

A. C. BIRD,
Freight Traffic Manager, Chicago.

J. H. HILAND,
General Freight Agent, Chicago.

D. W. KEYES,
First Asst. Genl. Freight Agent, Milwaukee.

N. J. GOLL,
Asst. Genl. Freight Agent, Chicago.

D. C. JONES,
Asst. Genl. Freight Agent, St. Paul.

E. S. KEELEY,
Asst. Genl. Freight Agent, Chicago.

J. J. COLEMAN,
Asst. Genl. Freight Agent, L. S. Div., Milwaukee.

Between—		And Chicago, Milwaukee, or Racine. Per car, in cents per 100 lbs.			
		Horses.	Cattle.	Hogs.	Sheep.
*Lainsville,	Iowa....	35.00	13½	15	17½
Green Island,	"	36.00	13½	15	17½
*Pleasant Creek,	"	37.00	13½	15	17½
Bellevue,	"	38.00	13½	15	17½
*Paradise,	"	40.00	14	16	18
La Motte,	"	42.00	15	17	19
Zwingle,	"	45.00	16	18	20
*Washington Mills,	"	47.00	17	19	21
Bernard,	"	47.00	18	19	21
*Fillmore,	"	47.00	19	19	22
Cascade,	"	47.00	20	19	23
*Freeburg,	Minn....	47.00	19	24	25
Caledonia,	"	48.00	20	25	25
Spring Grove,	"	50.00	21	25	25
Newhouse,	"	52.00	21½	25	25
Mabel,	"	54.00	21½	25	25
*Donalds Switch,	"	56.00	21½	25	25
Prosper,	"	58.00	21½	25	25
Canton,	"	60.00	22	25	25
Harmony,	"	62.00	22	25	25
Preston,	"	62.00	22	25	25
Brownsville,	"	45.00	18	22	24

* Prepaid station.

299 (Here follow lists of numerous stations and of rates therefrom shown after the manner illustrated by immediately foregoing. This list is omit'ed by agreement in order to shorten the record.)

Special rules.

1. Minimum weights: Following minimum weights will govern between points named in this tariff:

	Cattle. Also hogs or sheep in double-deck cars.	Hogs. Single-deck cars.	Sheep. Single-deck cars.
Cars 31 feet and under in length, inside measurement	19.000	15.000	10.000
Cars over 31 feet, to but not in excess of 33 feet 9 inches in length, inside measurement	20.500	16.000	11.000
Cars over 33 feet 9 inches in length, inside measurement	22.000	17.000	12.000

Horses and mules in carloads: The rates on horses and mules in carloads, named, apply upon shipments loaded in cars 29 feet, but not exceeding 30 feet 6 inches in length, internal measurement. Upon cars of greater or less measurement, as the case may be, the following will govern:

Horses and mules in cars less than 29 feet	94 per cent of the above rates.
Horses and mules in cars over 30 feet 6 inches to and including 32 feet	104 per cent of the above rates.
Horses and mules in cars over 32 feet to and including 33 feet 6 inches	107 per cent of the above rates.
Horses and mules in cars over 33 feet 6 inches to and including 36 feet	110 per cent of the above rates.

2. Valuation: The rates given in this tariff apply only on condition that the company assumes liability in case of loss or damage for which the company may be responsible to the extent only of the following valuation:

If horses or mules	not exceeding	100	dollars	each.
If cattle	"	50	"	"
If cows	"	30	"	"
If hogs or calves	"	10	"	"
If sheep or lambs	"	3	"	"

300 3. Mixed stock: Shipments of mixed cars of live stock may be accepted for interstate shipment, and locally between points in the State of Iowa, and locally between points in North and South Dakota, subject to the following rules:

A strong partition must be put in the car at the expense of shipper in order to separate the different kinds of stock, and this must be fastened to the car without the use of nail, spike, or any other fastening, which will mar or deface the car. Agent must examine all cars, and see that this rule is complied with.

The rate to be applied to such mixed shipment will be the highest rate provided for any class of stock in the car, and subject to highest minimum weights provided for any class of stock in the car. For example, on a mixed load of cattle and hogs use cattle or hog rate, whichever may be the higher, and cattle minimum weight.

4. Palace stock cars: The rates shown in this tariff apply on shipments made in palace stock cars, subject to minimum weights based on their length as given in rule 1 above, and further conditions of current issues governing shipments in cars exceeding 36 feet in length, but will not cover such charges as owners of such cars may make for their use. Particulars as to these rentals can be obtained on application to division freight agents or general freight department.

5. Contracts: The rates given in this tariff apply subject to all conditions named above, and further conditions shown in Limited Liability Stock Contract Form 71, which contract must be executed in triplicate and signed by both shipper and agent before stock departs from the station. The original contract must be forwarded to the freight auditor, the duplicate delivered to shipper, and the triplicate filed with station records.

301 Supplement No. 1 to G. F. D. No. 10464.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY,
GENERAL FREIGHT DEPARTMENT, CHICAGO.

Supplemental to above-named tariff, issued October 12, 1894, covering rates on live stock, in carloads, between Chicago, Milwaukee, or Racine, and stations in Illinois, Wisconsin, or Michigan.

Live stock, in carloads.

[Issued August 2, 1895. Effective August 7, 1895.]

Between—	Chicago or Racine.			and Milwaukee.		
	In cents per 100 lbs.			In cents per 100 lbs.		
	Cattle.	Hogs.	Sheep.	Cattle.	Hogs.	Sheep.
Valley Jc., Wis.	16.5	22.5	22.5	16.5	22	22.5
*Norway, "	16.5	22.5	22.5	16.5	22	22.5
Mather, "	16.5	22.5	22.5	16.5	22	22.5

*Prepaid station.

(Here follows a list of various stations on the Chicago, Milwaukee & St. Paul Railway and rates therefrom to Chicago or Racine and Milwaukee, shown in a similar manner as the above. By agreement same are omitted herefrom to shorten the record.)

Attach to and make part of G. F. D. No. 10464.

Supplement No. 3 to G. F. D. No. 10464. Cancels supplement No. 2.

Chicago, Milwaukee & St. Paul Railway.

Supplement to above-named tariff, issued October 12, 1894, covering rates on live stock, in carloads, between Chicago, Milwaukee, and Racine, and stations in Illinois, Wisconsin, or Michigan.

302 *Live stock, in carloads.*

[Issued February 21, 1896. Effective March 1, 1896.]

Between—	and Chicago or Racine.			Milwaukee.		
	Cattle.	Hogs.	Sheep.	Cattle.	Hogs.	Sheep.
	In cents per 100 pounds.			In cents per 100 pounds.		
Prairie du Chien Div.:						
Madison	12	15	15	12	15	15
La Crosse Div.:						
Deanville	11.5	15	15	11.5	14.2	14.2
Sun Prairie	11.5	15	15	11.5	15	15
Burke	11.5	15	15	11.5	15	15
North Div.:						
Oshkosh	12.5	17.5	18.5	11.5	16.5	15.5

Attach to and make part of G. F. D. No. 10464.

303

J. H. HILAND,
General Freight Agent, Chicago.
N. J. GOLL,
Asst. Gen'l Freight Agent, Chicago.
E. S. KEELEY,
Asst. Gen'l Freight Agent, Chicago.
H. E. PIERPONT,
Asst. Gen'l Freight Agent, Chicago.
D. W. KEYES,
1st Asst. General Freight Agent, Milwaukee.
D. C. JONES,
Asst. Gen'l Freight Agent, Minneapolis.
E. D. SEWALL,
Asst. Gen'l Freight Agent, Superior Div., Milwaukee.

Supplement No. 5 to G. F. D. No. 10770. Cancels all previous supplements.

Chicago, Milwaukee & St. Paul Railway.

Supplement to above-named tariff, issued November 20, 1894, naming rates on live stock, in carloads, between Chicago, Milwaukee, or Racine and stations in Iowa, Missouri, Minnesota, North Dakota, and South Dakota.

304 *Live stock in carloads.*

[Issued March 18, 1896. Effective March 23, 1896.]

	Between—	And Chicago, Milwaukee, or Racine.			
		Per car.	In cents per 100 lbs.		
		Horses.	Cattle.	Hogs.	Sheep.
Dub	Waterville, Iowa	50.00	19	23	24½
Div	Waukon, "	55.00	21	23	25
C. & C. B. Div	Olin, "	44.00	18	18	23
K & C	Powersville, Mo	65.00	22	23½	29
Div	Lucerne, "	65.00	22	23½	29
I. & D. Div	Running Water, S. D	80.00	33	37	38½
	*Baroda, Minn	70.00	25	26	26½
Southern Minn. Div.	Wells, "	70.00	25	26	27
	Minnesota Lake, "	70.00	25	27	28
	Mapleton, "	70.00	25	28	28½
	Easton, "	70.00	25	26	28
	Delavan, "	70.00	25	27	28
	Winnebago City, "	70.00	25	27	28
	Huntley, "	70.00	25	27	28
	*Granada, "	70.00	25	28	28
	Fairmont, "	70.00	25	28	28

*Prepaid station.

Attach to and make a part of above-named tariff.

J. H. HILAND,
General Freight Agent, Chicago.

N. J. GOLL,
Asst. Gen'l Freight Agent, Chicago.

E. S. KEELEY,
Asst. Gen'l Freight Agent, Chicago.

H. E. PIERPONT,
Asst. Gen'l Freight Agent, Chicago.

D. W. KEYES,
1st Asst. Gen'l Freight Agent, Milwaukee.

D. C. JONES,
Asst. Gen'l Freight Agent, Minneapolis.

E. D. SEWALL,
Asst. Genl. Freight Agent, Superior Div., Milwaukee.

305 Supplement No. 5 to G. F. D. No. 10464.

Chicago, Milwaukee & St. Paul Railway.

Supplement to above-named tariff, issued October 12, 1894, covering rates on live stock, in carloads, between Chicago, Milwaukee, or Racine, and stations in Illinois, Wisconsin, or Michigan.

Live stock, in carloads.

[In cents per 100 lbs. Effective July 10, 1896.]

Between—	And Chicago or Racine.		
	Cattle.	Hogs.	Sheep.
La Crosse Div.:			
Richwood, Wis	10	13.5	13.5
Reesville, "	10	13.5	13.5
Elba	11	15	15
Northern Division:			
Schleisingerville	9	12	12
Hartford	9	12.5	12.5
Rubicon	10	12.5	12.5
Woodland	10	12.5	12.5
Iron Ridge Jct	10	12.5	12.5
Horicon Jct	10	13.5	13.5
Burnett Jct	10	13.5	13.5
Minnesota Jct	10	13.5	13.5
Mayville	10	13.5	13.5
South Byron	10.5	14.5	14.5
La Crosse Div.:			
Richwood, Wis	9	12	12
Reeseville, "	9	12	12
Elba	10	13	13
Northern Div.:			
Schleisingerville	6	8	8
Hartford	6.5	8.5	8.5
Rubicon	7	9	9
Woodland	7	9	9
Iron Ridge Jct	8	10	10
Horicon Jct	9	12	12
Burnett Jct	10	12.5	12.5
Minnesota Jct	10	12.5	12.5
Mayville	8	10	10
South Byron	9	12	12

306 Attach to and make part of G. F. D. No. 10464.

J. H. HILAND,
General Freight Agent, Chicago.
N. J. GOLL,
Asst. Genl. Freight Agent, Chicago.
E. S. KEELEY,
Asst. Genl. Freight Agent, Chicago.
H. E. PIERPONT,
Asst. Genl. Freight Agent, Chicago.
D. W. KEYES,
1st Asst. Genl. Freight Agent, Milwaukee.
D. C. JONES,
Asst. Genl. Freight Agent, Minneapolis.
E. D. SEWALL,
Asst. Genl. Freight Agent, Superior Div., Milwaukee.

Chicago, Milwaukee & St. Paul Railway.

Terminal charges at Chicago Union Stock Yards, Ill., in addition to the rates named to or from Chicago on live stock and all other carload traffic.

[Issued July 19, 1897. Effective July 24, 1897.]

Between Chicago, Illinois, and—	Rate in dollars per car.
Chicago Union Stock Yards, Ill.:	
Industries located on tracks of Union Stock Yards & Transit Co. and the Indiana State Line Ry	$2.00

The above charge must by entered separately by waybilling agent in freight-charges column of waybill, also on bill of lading and live-stock contract.

Foreign forwarding lines must see that the foregoing requirements are complied with, otherwise the terminal charge will be added by this company before delivery.

J. H. HILAND,
General Freight Agent, Chicago.
N. J. GOLL,
Asst. Genl. Freight Agent, Chicago.
307 E. S. KEELEY,
Ass't Gen'l Freight Agent, Chicago.
H. E. PIERPONT,
Ass't Gen'l Freight Agent, Chicago.
D. W. KEYES,
1st Ass't Gen'l Freight Agent, Milwaukee.
D. C. JONES,
Ass't Gen'l Freight Agent, Minneapolis.
E. D. SEWALL,
Ass't Gen'l Freight Agent, Superior Div., Milwaukee.

Terminal charges at Union Stock Yards.

Receipt No. 5941. G. F. D. No. 23429. Cancels G. F. D. Nos. 10464 and 10770.

Chicago, Milwaukee & St. Paul Railway.

Tariff on live stock, in carloads, between Chicago, Ill., Milwaukee or Racine, Wis., and stations in Illinois, Wisconsin, Michigan, Iowa, Missouri, Minnesota, North Dakota, or South Dakota.

For minimum weights, rules, and regulations, see pages 20 and 21.

Issued September 10, 1898. Effective September 15, 1898.

NOTE.—$2.00 per car in addition to the current rates to or from Chicago will be charged on live stock in carloads to or from Chicago Union Stock Yards. This charge must be entered separately by waybilling agent in "freight charges" column of waybill; also on bill of lading and live-stock contract.

Immediate stations: Agents are prohibited from quoting or using a greater rate for a shorter than for a longer distance over the same line in the same direction when the shorter is wholly included within the longer distance.

Car-service charge: In addition to rates provided for herein an additional charge of not less than $1.00 per day or fraction thereof will be charged on all carloads for detention at loading or unloading point beyond 48 hours.

J. H. HILAND, *General Freight Agent, Chicago.*

Live stock between Chicago, Milwaukee, etc., and stations in Illinois, Wisconsin, Iowa, Minnesota, etc.

308 Receipt No. 7362. Supplemental No. 6 to G. F. D. No. 23429. Cancels all previous supplements.

Chicago, Milwaukee & St. Paul Railway.

Supplement to above-named tariff, issued September 10, 1898, covering rates on live stock between Chicago, Ill., Milwaukee, or Racine, Wis., and stations in Illinois, Wisconsin, Iowa, Missouri, Minnesota, North and South Dakota. Live stock in carloads.

Issued September 14, 1899. Effective September 19, 1899.

Index No.	Between—	Chicago, Ill., in cents per 100 lbs.			Racine, Wis., and Milwaukee, Wis., in cents per 100 lbs.		
		Cattle.	Hogs.	Sheep.	Cattle.	Hogs.	Sheep.
	Mineral Point Division:						
128	Mineral Point, Wis.	14.5	18	18	14.5	18	18
	La Crosse Division:						
166	Hubbellton, Wis.	10	13.5	13.5	9	11.7	11.7

Index No.	Between Chicago, Ill., Milwaukee, or Racine, Wis., and—	In dollars per standard car. (See note on page 21 of tariff.)	In cents per 100 lbs.		
		Horses.	Cattle.	Hogs.	Sheep.
	Dubuque Division:				
375	Gordons Ferry, Iowa	35.00	14	15	18¼
378	Eagle Point, "	42.00	14	16	20¼
379	Edmore, "	44.00	15	16	20¼
380	Specht's Ferry, "	45.00	16	17	22
381	Cameron, "	45.00	16	17	22
412	Caledonia, Minn.	48.00	20	24	25
413	Spring Grove, "	50.00	21	24	25
414	Newhouse,	52.00	21¼	24	25
415	Mabel, "	54.00	21¼	24	25
416	Donalds Switch, "	56.00	21¼	24	25
417	Prosper	58.00	21¼	24	25
418	Canton	60.00	22	24	25
419	Harmony	62.00	22	24	25
420	Preston	62.00	22	24	25
	Iowa & Dakota Division:				
692	Rock Valley, Iowa	75.00	25	25	30
309	Hastings & Dakota division:				
902	Andover, S. Dak.	85.00	36	39	41
903	Pierpont,	85.00	37	40	42
904	Langford, "	85.00	37	40	42
905	Spain,	85.00	37	40	42
906	Britton,	85.00	37	40	42
907	Newark, "	85.00	37	40	42
908	Brampton, N. Dak.	85.00	37	40	42¼
909	Cogswell, "	85.00	37	40	42¼
910	Harlan,	85.00	37	40	42¼

Prepaid station.

Attach to and make part of the above-named tariff.

J. H. HILAND,
General Freight Agent, Chicago.

Index No.	Between Chicago & Council Bluffs Division (in Illinois).	And					
		Chicago, Ill. In cents per 100 pounds.			Milwaukee, Wis. (For rates to or from Racine, Wis., see footnote.) In cents per 100 pounds.		
		Cattle.	Hogs.	Sheep.	Cattle.	Hogs.	Sheep.
1	Hermosa, Ill.	.....	.....	.....	7	7.5	9
2	Cragin, "	.....	.....	.....	7	7.5	9
3	Dunning, "	4	6	6	7.5	10	10
4	Mont Clare, "	4	6	6	7.5	10	10
5	Franklin Park, "	4	6	6	8	10	10
6	Mannhiem, "	5	7	7	8	10	10
7	Bensenville, "	6.2	7.5	7.6	8.5	11	11
8	Wooddale, "	6.2	7.5	7.6	8.5	12	12

(Here follows a list of all the stations on the Chicago, Milwaukee & St. Paul ailway and of the respective rates therefrom to Chicago and Milwaukee, shown in a similar manner as in the foregoing instances. The same is omitted by agreement to shorten the record.

Horses and mules, in carloads, between Chicago: Milwaukee or Racine, and stations in Illinois, Wisconsin (except La Crosse, North La Crosse, and Onalaska, Wis.) or Michigan, the rates on horses and mules, in carloads, will be 110 per cent of the full tariff rates on cattle, in carloads.

310 1. Minimum weights.

Following minimum weights will govern between points named in this tariff:

	Cattle, also hogs and sheep in double-deck cars.	Hogs, single deck.	Sheep, single deck.
Cars 31 ft. and under in length, inside measurement.....	19.000	15.000	10.000
Cars over 31 ft. to but not in excess of 33 ft. 9 in. in length, inside measurement.....	20.500	16.000	11.000
Cars over 33 ft. 9 in. in length to and including 36 ft., inside measurement	22.000	17.000	12.000

When live stock (except horses and mules) originates at and is destined to a point where there are no track scales, it must be billed on basis of minimum weights provided on page 20, unless shippers' weights are greater, in which case it must be billed at the latter weights, subject to correction. This rule will also apply where it may be impossible from any cause to obtain scale weights.

Horses and mules, in carloads, between Chicago, Milwaukee or Racine and La Crosse, North La Crosse, Onalaska, Wis., stations in Iowa, Missouri, Minnesota, North and South Dakota: The rates on horses and mules, in carloads named herein, apply upon shipments loaded in cars 29 feet but not exceeding 30 feet 6 inches in length, internal measurement. Such cars will be known as standard cars. Upon cars of greater or less measurement, as the case may be, the following will govern:

Cars less than 29 feet, 94 per cent of the tariff for standard cars.

Cars over 30½ feet, to and including 32 feet, 104 per cent of the tariff for standard cars.

Cars over 32 feet, to and including 33½ feet, 107 per cent of the tariff for standard cars.

Cars over 33½ feet, to and including 36½ feet, 110 per cent of the tariff for standard cars.

Cars over 36½ feet, to and including 38 feet, 113 per cent of the tariff for standard cars.

Cars over 38 feet, to and including 40 feet, 116 per cent of the tariff for standard cars.

Cars over 40 feet, to and including 42 feet, 125 per cent of the tariff for standard cars.

311 Cars over 42 feet, to and including 44 feet, 135 per cent of the tariff for standard cars.

Over 44 feet in length, inside measurement, 140 per cent of the tariff for standard cars.

2. Valuation.

The rates given in this tariff apply only on condition that the company assumes liability in case of loss or damage, for which the company may be responsible to the extent only of the following valuation:

If horses or ponies (geldings, mares, or stallions), mules or jacks, not exceeding 100 dollars each.

If oxen, bulls, or steers, not exceeding 50 dollars each.

If cows, not exceeding 30 dollars each.

If calves or hogs, not exceeding 10 dollars each.

If sheep or goats, not exceeding 3 dollars each.

3. Mixed stock.

Shipments of mixed cars of live stock may be accepted for interstate shipment, and locally between points in the State of Iowa; also locally between points in North and South Dakota, subject to the following rules:

A strong partition must be put in the car at the expense of shipper in order to separate the different kinds of stock, and this must be fastened to the car without the use of nail, spike, or any other fastening which will mar or deface the car. Agent must examine all cars and see that this rule is complied with.

The rate to be applied to such mixed shipment will be the highest rate provided for any class of stock in the car, and subject to highest premium rates provided for any class of stock in the car.

For example: On a mixed load of cattle and hogs use cattle or hogs rate, whichever may be the higher, and cattle minimum weight.

For rates on mixed cars of live stock between stations in Wisconsin locally, or from stations on Mineral Point Division to Chicago, Ill., see G. F. D., Nos. 6339 and 19633, or subsequent issues thereof.

4. Palace stock cars.

The rates shown in this tariff apply on shipments made in palace stock cars, subject to minimum weights based on their lengths as given in
312 rule 1, and further conditions of current issues governing shipments in cars exceeding 36 feet in length, but will not cover such charges

as owners of such cars may make for their use. Particulars as to these rentals may be obtained on application to division freight agent or general freight department.

5. Contracts.

The rates given in this tariff apply subject to all conditions named above and further conditions shown in Limited Liability Stock Contract, Form 71, which contract must be executed in triplicate and signed by both shipper and agent before stock departs from the station. The original contract must be forwarded to the freight auditor, the duplicate delivered to shipper, and the triplicate filed with station records.

The COURT. You have introduced these schedules for the purpose of showing the wording of your schedules at the time as to the imposition of this two dollars, and I would suggest that it would be a wise thing for the purpose of not encumbering the record that it might be agreed that only that part of these schedules in reference to this two-dollar charge shall go into the record.

Mr. KELLOGG. We would be willing to do that.

The COURT. The language used in the Santa Fe schedule seems to be different from the others.

Mr. KELLOGG. Not the original one. We can undoubtedly make up a record of this case by stipulation, taking the peculiar language used, and stating that is contained in the tariffs filed with the Commissioner, and that will cover the point; and the schedules since, we have proven, have used the same language.

The COURT. Have you any other schedules?

Mr. KELLOGG. They are all in except the Illinois Central, which we will supply in the morning.

The COURT. I would like to dispose of this point preliminary to disposing of the rest of the case—that is, the construction to be given to your schedules.

Mr. KELLOGG. We have all the evidence in on the schedules that we are going to put in.

The COURT. I mean to say, bearing on the segregation of your lines, have you any other evidence bearing on that point?

Mr. KELLOGG. I don't know until I talk with the other counsel.

(Page 99.)

On the question of the division of the rates we have no other testimony to offer than the tariff sheets, which we have already offered.

313 Mr. DUNLAP. I wish to introduce this tariff, just one part of it, which is pertinent to show the rate. Atchison, Topeka & Santa Fe Railroad, joint through live-stock tariff, between Mississippi River, Peoria, Chicago, and points common therewith, and points in Kansas, Colorado, Oklahoma Territory, Indian Territory, etc. Effective October 7th, 1893. Horses and mules, in dollars and cents, per car of standard length, $50.00 per car. Carloads of not less than the minimum, as shown on page 21, cattle, 14¾; hogs, s. d. cars, 15 cents; sheep, s. d. cars, 17½ cents, between Atchison, Kansas, and Chicago.

Horses and mules, in dollars and cents per car, standard length, $70.00. Carloads of not less than the minimum as shown on page 21, in cents per hundred pounds, cattle, 23½ cents; hogs, s. d. cars, 22 cents; sheep, s. d., 25 cents, and so on down. That's simply an example.

Mr. COWAN. That shows the same rate from all of the Missouri River points.

Mr. DUNLAP. I introduce that as a sample to show that it fixes the rates between Atchison, Kansas, and Chicago.

Mr. COWAN. The sheet contains other rates also?

Mr. DUNLAP. Yes, sir.

Mr. COWAN. Are you going to just consider it all in?

Mr. DAY. That is all right.

Mr. KELLOGG. I understood the court yesterday that when we have introduced the testimony on this particular branch, the court desired to hear us upon that question, and with the court's permission I will say a few words, and then would like to have the other counsel also.

(Page 100.)

Mr. BETHEA. Hadn't we better close up the evidence first?

The COURT. You don't propose to introduce any evidence on this point?

Mr. DAY. Mr. Bethea's point is, and this side earnestly urges, that the ordinary procedure obtain; they they shall go ahead and put in all their evidence before we have to reply.

Mr. KELLOGG. As I understood the court, the court desired us to put the testimony in on that particular point, and have it argued. If the court decides against us on that point—we think that point decisive—we shall go into the testimony and show the through rate to Chicago as compared to other rates, and go into the question of discrimination between various places, and a great deal of proof, tables of rates, and introduce a great deal of proof on those various questions.

314 That, of course, we will go into, provided the court should hold that this is not absolutely decisive. We think that it is, and if he decides upon this question now it will save a great deal of extra testimony.

Mr. BETHEA. We want them to put in whatever evidence they desire to.

Mr. KELLOGG. We have no more evidence to offer as to the character of these tariffs; that matter stands at an end as to our testimony, also on their declaration as to their testimony. If we are right in our contention on the law applicable to these written instruments, the tariffs, why, of course, the decision of this question settles this case in favor of the defendants, and saves the testimony of everybody in going into all the other matters in the case; therefore it would seem to be a time-saving plan to take up and dispose of that point and see whether it is necessary to go into anything else.

(Page 101.)

The COURT. I believe the gist of this case, as presented, is that the old rate from that point in Chicago where they touch those traffic lines, from that point to the stock yards, is still in force, and that this is superadded. Now, then, if it shall turn out that there is a perfect segregation, and the rate holds to that point, and this is a single rate from that point to the stock yards, or that there is a segregation as to mileage, not simply as to charge, why, that, then, would become a very important feature of this case.

I think, as I am now advised, if that fact should be established, then

the findings of the board of commissioners can not stand, because they have found that it is a reasonable charge for the service performed; and if they should find that the whole charge was unreasonable it would have to apply to some other part of the road. I am free to say that from the reading of the schedules I have no opinion on the subject.

(Page 107.)

The foregoing was all the testimony offered by defendants, whereupon, in rebuttal, petitioner introduced

T. W. TOMLINSON, who, being duly sworn, in reply to the direct interrogatories of Mr. Cowan, testified as follows:

Mr. COWAN. What business are you engaged in?

A. I am a railroad representative of the Chicago Live Stock Exchange.

Q. As such representative, what experience have you had in the examination of the rates of railroads to Chicago which are carrying
315 live stock from the West or Southwestern points?

A. The character of my duties are such that I am compelled to continually and carefully examine live-stock rates published by the different roads into Chicago.

Q. Do you know what the rates have been at different periods of time on live stock being shipped to Chicago, say from Missouri River points, from Colorado points, from Montana points, from Texas points?

A. Generally; yes, sir.

Q. During the time you have been engaged in the business you are now in have you had occasion to examine the tariffs of these railroads to make any comparison of the rates?

A. Yes, sir.

Q. What was the condition of the rates, as to being cheaper or not, from 1890 to 1896.

(Page 108).

Mr. KELLOGG. That is objected to.

Mr. DUNLAP. They are trying, your honor—and that is the whole purpose of this—to have Mr. Tomlinson instead of your honor interpret these documents.

Mr. BETHEA. We have some documents to introduce here in a moment.

Mr. COWAN. Certainly it is perfectly admissible to show that these gentlemen did not change the rates in five years, embraced in a period from 1892; that the rate sheets themselves read from Kansas City to Chicago, and that during that time were not changed during a period of five years.

Mr. DUNLAP. Up to 1894?

Mr. COWAN. For Colorado points from 1891 your rates remained absolutely and exactly the same, as shown by the certificate of the Commission?

Mr. DUNLAP. That is, you mean, the Chicago rate, apart from the question whether this terminal tariff made any difference?

Mr. COWAN. In other words, that their rate sheets read the same before and after; that they remained in force for five years, including 1894.

Now, if the court please, these gentlemen have made various statements in regard to those fluctuations. Mr. Tomlinson is familiar with all these matters, and we propose to show that by him. It is a mere

pretext to say that the $2.00 rate was put on to stiffen the whole rate. What better proof could be introduced in evidence than the fact that during this time your rate sheets did read $95.00 a car from Fort Worth, Texas, to Chicago?

The COURT. The question in my mind is whether these sheets are not the best evidence.

(Page 109).

316 Mr. COWAN. Yesterday the court permitted the witness, Mr. Bird, to testify what were the differentials in particular instances.

The COURT. In a given case.

Mr. COWAN. That is just what I am going to ask him about, in which he has made the examination, and we verify it by the certificate in the Interstate Commerce Commission.

Q. Had you any experience previous to the time you went in as railway representative of the exchange here in the business of making tariffs and examining tariffs?

A. Yes, sir.

Q. What was that experience?

A. Just previous to the time I became connected with the exchange I was in the employ of the Santa Fe a portion of the time as general clerk, then chief clerk in the freight department. Prior to that I had been connected with a railroad out West as superintendent and secretary of the company. Prior to that I had been secretary and chief clerk for G. B. Blanchard, and I was secretary of a number of rate committees.

Q. Mr. Tomlinson, do you know what were the rates on live stock from Fort Worth, Texas, to Chicago during a period of time, say, from 1891—May, 1891—to January, 1896?

Mr. DUNLAP. We object to that.

A. Yes, sir.

The COURT. Let him give it as one day.

Q. Was it all the same during that time, or not?

(Objected to.) (Page 110).

A. From the certificate of evidence of rates——

The COURT. That won't do. Of your own knowledge.

Mr. BETHEA. I don't know why that won't do.

The COURT. Because the certificate shows for itself.

Mr. BETHEA. It contains the only ground he can swear to as an expert.

The COURT. If you want to ask him what that certificate contains, it is a different question. The examination of a certificate does not require an expert; it is a matter of computation.

Mr. COWAN. I will waive that particular question.

Q. Mr. Tomlinson, how were the rates made of roads loading from Texas points to Chicago? By what association, if you know, were those rates made?

Mr. DUNLAP. If your honor please, that's objected to as not pertinent in this case, and more particularly just now as having nothing to do with the question which your honor has decided should be disposed of. The question how those rates were made, whether by any association or not, certainly has nothing to do with the question whether these tariffs do or not show a segregation of the charge.

317 The COURT. It may be competent to show that in order to show his qualifications in answering the question. He may answer.

A. They were made generally by what is known as the Southwestern Freight Association.

Q. What roads were embraced in that association?

(Objected to by defendants. Objection overruled. To which ruling defendants then and there excepted.)

A. All lines; all lines handling freight between Missouri River points and Texas points.

Q. I will ask you to state whether the rates fixed by that association were the rates which prevailed on June 1, 1894.

(Page 111.)

(Objected to by defendants as incompetent and irrelevant. Objection overruled. To which ruling defendants then and then excepted.)

A. Yes, sir.

Q. State as specifically as you can.

A. Between competitive points where two or more lines might be interested those rates were fixed generally through the Southwestern Freight Association or the freight officials representing those lines; but if you take, for example, a local point on an off line, that might be fixed locally by the lines that are strictly interested in that traffic.

Mr. COWAN. I would like to ask, Mr. Tomlinson, were you a member of the Western or Southwestern Freight Association?

A. No, sir.

Q. Were you present at its meetings?

A. No, sir.

Q. Then you do not speak from any knowledge of the transactions of this association, from your being present and participating in those, or having any knowledge of them in that way?

A. No, sir.

Q. You are speaking possibly of what you deemed to have been the powers of the Southwestern Freight Association?

A. I am speaking from what was common knowledge.

Q. From what you have heard on the subject?

A. Not exactly what I have heard, but what I have heard and what I have read.

Q. But you never were a member of this association, or present at its meetings?

(Page 112.)

A. No, sir.

Q. And what you say, you tell here to the court as the result of what you have read on the subject and what you have heard, and what you would naturally infer?

A. Yes, sir.

Mr. DAY. You say you were rate clerk and had charge of the tariff sheets of what road?

A. Santa Fe.

318 Q. And the Santa Fe was a member of this association?

A. Yes, sir.

Q. And did you get the proceedings of that association?

A. Yes, sir.

Q. They came through your hands?
A. Yes, sir.
Q. Coming from that association to your road?
A. Yes, sir.
Q. That was a part of the basis of your information?
A. Yes, sir.
Q. When were you rate clerk of the Atchison road?
A. 1895, I think.
Q. From what time to what time?
A. I can't give the exact dates; the records of the Santa Fe would tell.
Q. Tell us as nearly as you can.
A. Probably about four or five months, and then I was made chief clerk right after.
Q. In that capacity you never attended the meetings of the Southwestern Freight Association?
A. No, sir.
Q. And it is still true that anything you think, or might think, would come to you from other sources?

(Page 113,)

A. Yes, sir.
Mr. BOWERS. I move to strike it all out as hearsay.
The COURT. I don't see how the witness can give as his own knowledge any testimony on this point; while it comes to him in the way that most all railroad men get their information, still it is not competent in this case.
(To this ruling the petitioner then and there excepted.)
Mr. COWAN. There isn't a man who can testify in any other way.
Q. Mr. Tomlinson, I will ask you whether you have made any comparison from the tariff sheets that are furnished by the Interstate Commission?
A. I have; in making up the rates on carloads of cattle, hogs, or sheep you will observe that it states that there are different lengths of cars.
Q. Now, in order to determine what were comparative rates from different points, what have you done in the way of making estimates?
A. I have reduced the rates certified to by the Commission and made a comparison. The rates are stated in dollar and cents per car, upon what is known as a standard car. Cars of a greater or less dimensions take a percentage greater or less than the standard cars. In order to make an intelligent comparison it is necessary to reduce either the percentage in dollars and cents per hundredweight or vice versa; that I have done.
Q. Well, I will ask you, have you examined the statements of the Interstate Commerce Commission, pages 1, 2, and 3 of that certificate?

319 Mr. DUNLAP. That's not in evidence.

(Page 114.)

Mr. BETHEA. It was offered in evidence.
Mr. BOWERS. We said we would like to look it over, and said we would let you know whether it was objected to or not.
Mr. BETHEA. I certainly thought it was in evidence.
Mr. KELLOGG. Well, then, we wish to enter an objection that it is incompetent, irrelevant, and immaterial.

Mr. DUNLAP. It is simply a certified copy by the secretary that certain papers on file with the Commission, in his judgment, show certain rates; in other words, this is not a certified copy of an instrument.

Mr. BETHEA. It is a certified copy of a portion of the record.

The COURT. It is a comparison, I should think.

(Page 115.)

I don't see how that can be, when you get a comparison by somebody that is not even warranted by law.

Mr. TOMLINSON. I have checked most of the rates here myself.

The COURT. That would be a different matter.

Mr. COWAN. Now, from your personal knowledge, from the examination of the rates themselves, I will ask you to state what was the rate of freight charged upon live stock shipped from Ft. Worth on the Texas Pacific to points on the Gulf, Colorado and Santa Fe, M., K. & T. Railway, and other connections of these lines, that are differentials in this case?

Mr. BOWERS. At what time?

A. June 1, 1894.

(That's objected to on the ground that it should be shown by the tariffs which are in evidence, or any other tariffs which they may be able to produce.)

Mr. COWAN. The rule just announced was that if he had examined them he might testify.

Mr. BOWERS. If he did make a comparison.

The COURT. I don't see how you can make this witness competent, as against the objection, competent to testify to the contents of a schedule, if you propose to show that they don't follow their schedules.

Mr. COWAN. I propose to show that the schedules of rates in force were as I have stated, that they remained stationary from 1890 and 1891 to 1896, and they can't produce a single tariff that won't show that. I am asking this witness what were the charges, in fact.

The COURT. He may answer what was actually paid, if he knows.

(Page 116.)

Mr. DUNLAP. Do you mean paid in violation of our tariffs?

320 The COURT. It is immaterial.

Mr. BOWERS. And further than that, that would be a matter not involved in this litigation.

The COURT. If he knows what was paid, he may tell; of course the rate fixed by the schedule will show.

A. I examined rates particularly relating to Ft. Worth, Texas.

Mr. BOWERS. Your honor has put forward just this question, whether the tariffs that are in evidence, and which they don't propose, as I understand, to contradict, do or do not show from June 1, 1894, a charge to one point, and another charge from that point on. Now the Commission has found the very facts about which Mr. Cowan is asking Mr. Tomlinson. The Commission has found that the flat rate to Chicago after June 1, 1894, remained the same that it had been before; they have found exactly that fact. The whole point is concerning the segregation of the charge. The Commission has found that the rate made to Chicago June 1, 1894, continued to be made after June 1, 1894, but they say that wouldn't do after June 1, 1894, because, in addition to that rate which

they say remained the same as before, we put the $2.00 on top of the other. Now, on the contrary, we say the Commission was wrong in that decision, because the tariffs that we now put before your honor conclusively show, as a matter of law, that the $2.00 charge was not superimposed, but we distinguish one to the point of junction and the other beyond the point of junction.

(Page 117.)

The COURT. Well, then, you are agreed on the points of fact.

Mr. COWAN. Now, then, Mr. Tomlinson, previous to June 1, 1894, from, say, May, 1891, from the Texas points, and from August, 1890, from Colorado points, did the rates remain the same during that period of time?

(Objected to.)

Q. I am asking whether the rates remained the same?

The COURT. How does that bear upon this question of the division of the rates.

Mr. COWAN. If your honor please, in my mind it does not bear at all. The reason I am offering that testimony is this: It has been stated, as your honor remembers, and I want to be fair in this matter, it has been stated so often by counsel for the other side that there was a continual fluctuation up and down of tariffs. They have offered no testimony to show it, I admit, excepting the testimony of Mr. Bird, in his general statement, that he didn't know of any fixed differentials. Now, then, I want to show that the tariffs had remained the same from all those points from May, 1891, from Texas and Indian Territory, and August,
321 1890, for these Colorado points, simply to show that it remained the same right along, in order to draw the inference that they simply superadded this $2.00.

Mr. KELLOGG. You don't mean that it remained absolutely the same?

(Page 118.)

Mr. COWAN. In 1896 that was.

Mr. KELLOGG. That don't bear on the question of the division of this rate.

The COURT. Let's keep down to this question.

Mr. COWAN. Have you gentlemen got the rates for 1891, 1892, and 1893?

Mr. KELLOGG. We may have them here.

Mr. COWAN. You have some of them. Let us introduce them.

Mr. KELLOGG. Are you going to try the whole case?

Mr. DAY. Mr. Dunlap put in their sheets for 1893.

The COURT. Now, how will that bear upon this question, this point, that at the time they changed the rate from $50.00 to $52.00 they made a different rule as to the division of mileage of the railroad trackage?

Mr. DAY. They have not shown that they have made a division.

Mr. COWAN. It is a mere circumstance going to show that when the $2.00 was put on it was intended as such. It was not intended simply to be an additional rate, but was a superadded rate covering the service already performed.

The COURT. For the purpose of this argument they were bound by the through rate to carry all stock to the stock yards. The question is whether that was changed.

Mr. DAY. I have another witness on this same point. Mr. Courtright, take the witness stand, please.

H. H. COURTRIGHT, being duly sworn, in reply to interrogatories propounded by Mr. Day, testified as follows:

Q. State your name and occupation.

(Page 119.)

A. Henry H. Courtright; chairman of the Western Trunk Line Committee.

Q. How long have you been chairman of the Western Trunk Line Committee?

A. Since the first of July.

Q. What was your official position prior to that?

A. Well, I was one of the commissioners of this same committee.

Q. And prior to that?

A. General freight agent of the Chicago & Alton Railroad Company.

322 Q. What roads comprise the Trunk Line Committee?

Mr. KELLOGG. Objected to as immaterial.

Mr. DAY. It may become material.

The COURT. Let him answer.

A. I can read them off to you, if that will do.

Q. Yes.

A. The Atchison, Topeka & Santa Fe; Burlington, Cedar Rapids & Northern; Chicago & Alton; Chicago & North-Western; Chicago, Burlington & Northern; Chicago, Burlington & Quincy; Chicago Great Western; Chicago, Milwaukee & St. Paul; Chicago, Rock Island & Pacific; Chicago, St. Paul, Minneapolis & Omaha; Hannibal & St. Joseph; Iowa Central; Kansas City, Ft. Scott & Memphis; Kansas City, Pittsburg & Gulf; Kansas City, St. Joseph & Council Bluffs; Missouri, Kansas & Texas; Missouri Pacific; Rock Island & Peoria; Sioux City & Pacific; St. Louis & San Francisco; St. Louis, Keokuk & North-Western; Wabash.

Q. You say, Mr. Courtright, that prior to the time you became a commissioner of this association that you were the general freight agent of the Chicago & Alton Road?

(Page 120.)

A. Yes, sir.

Q. Were you a member—was your road a member of the Western Freight Association?

A. Yes, sir.

Q. Were you an officer of the Western Freight Association?

A. While I was with the Chicago & Alton?

Q. Yes, sir.

A. No; I was not.

Q. After you left, were you?

A. I was a commissioner of the Western Freight Association.

Q. And as general freight agent you were a member of the association?

A. Yes, sir.

Q. Did this association of which you are now a commissioner succeed to the Western Freight Association?

A. Yes, sir.

Q. Have you its records in your possession?

(Objected to.)

Mr. DAY. I will show it is germane, your honor.

The COURT. He may answer.

A. I think most of the records are in the office. I can not say as to that—that all the records are there. I never examined.

Q. What roads were members of the Western Freight Association?

A. I believe practically the same roads that I have read.

Q. May have been some additional roads since the organization, may there not?

A. Yes, sir.

323 Q. You were directed to produce a paper here under the subpœna?

(Page 121.)

A. Yes, sir.

Q. Have you it?

A. Yes, sir.

Q. Let us see it, please.

(Witness hands paper to Mr. Day.)

Q. Where did you find that document?

A. I found it in the office with the loose papers.

Q. In what office?

A. Office of the Western Trunk Line Committee.

Q. Among what papers did you find it?

A. I found it amongst the circulars that are filed; we keep the circulars, usually.

Q. You were a member of the Western Freight Association at the time that paper was issued?

A. Yes, sir; that is, my company was.

Q. You know that that tariff sheet was issued by the Western Freight Association?

A. That is a copy of which is on file in the office.

Q. Was issued by the Western Freight Association?

A. It is signed by its chairman.

Q. Who was the chairman at that time?

A. J. W. Midgeley.

Q. Now, Mr. Courtright, under the procedure that prevailed in the Western Freight Association, in which you say you were merely representing the Chicago & Alton, what tariffs, what tariff sheets, did that association publish for its constituent members?

A. Mostly through tariffs, which we know as through tariffs from Missouri River points and possibly St. Paul; I don't remember about that because I was not connected with the St. Paul, to Chicago, St. Louis, and the Mississippi River.

(Page 122.)

Q. The association published the joint tariffs and the through tariffs, and the individual roads published their individual tariffs?

A. I think they did in some cases; yes, sir.

Q. In publishing the joint tariffs and through tariffs, who did that for the association?

A. You mean the clerk that compiled the Tariffs?

Q. No; the agency.

A. Through the Southwestern Association, as it was known at that time.

Q. Of which Mr. Midgeley, you say, was chairman?

A. Yes, sir. The heading on that particular document stated the association that was in effect at that time; it has changed its name several times.

Q. Do you remember the circumstances of the putting on of
324 the terminal charge of $2.00 in addition to the through rate for the service?

A. Yes; I have the record of it; yes, sir.

Q. I will ask you to look at that paper [handing paper to witness] and see if you know what it is.

A. I don't remember about this special one. Isn't it the same as the other?

Mr. BOWERS. Don't state what it is.

Mr. DAY. You read it.

Mr. BOWERS. We want to see it before you state what it is.

A. I don't remember this particular circular.

Q. You were a member of the association at the time that was issued?

A. Yes; but there were a great many circulars issued, and I can't keep them all in mind. I remember in a general way that there was an arrangement of this kind.

(Page 123.)

Mr. DAY. We will offer in evidence joint circular No. 62.

(Marked Courtright Exhibit 1.)

Receipt No. 324. Western Freight Association.

Joint circular No. 62 of the Atchison, Topeka & Santa Fe Railroad, Burlington, Cedar Rapids & Northern Railway, Chicago & Alton Railroad, Chicago, Burlington & Northern Railroad, Chicago, Burlington & Quincy Railroad, Chicago & North-Western Railway, Chicago, Milwaukee & St. Paul Railway, Chicago, Rock Island & Pacific Railway, Chicago Great Western Railway, Chicago, St. Paul, Minneapolis & Omaha Railway, Hannibal & St. Joseph Railroad, Illinois Central Railroad, Iowa Central Railway, Kansas City, St. Joseph & Council Bluffs Railroad, Minneapolis & St. Louis Railway, Missouri Pacific Railway, Rock Island & Peoria Railway, St. Louis & San Francisco Railway, St. Louis, Keokuk & North-Western Railroad, Wabash Railroad, Wisconsin Central Lines.

CHICAGO, *May 18, 1894.*

On and after June 1, 1894, a terminal charge of $2.00 per car will be made in addition to the Chicago rates, as shown in the tariffs of the Western Freight Association, on live stock and other freight received from or delivered to the stock yards or industries located on the tracks of the Union Stock Yards Railway, the Indiana State Line Railway, and the Northern Indiana Railroad.

325 The foregoing will apply as an amendment to all tariffs issued by the above-named association; also to all joint tariffs published by connections.

F. C. GAY,
General Freight Agent, A., T. and S. F. R. R.
T. H. SIMMONS,
General Freight Agent, B., C. R. & N. Ry.
W. C. STITH,
General Freight Agent, St. L. & S. F. Ry.
H. H. COURTRIGHT,
General Freight Agent, C. & A. R. R.
W. J. C. KENYON,
General Freight Agent, C., B. & N. R. R.
THOS. MILLER,
General Freight Agent, C., B. & Q. R. R.
H. R. MCCULLOUGH,
General Freight Agent, C. & N. W. Ry.
J. H. HILAND,
General Freight Agent, C., M. & St. P. Ry.
P. C. STOHR,
General Freight Agent, C. G. W. Ry.
J. T. CLARK,
General Freight Agent, C., St. P., M. & O. Ry.
J. M. JOHNSON,
General Freight Agent, C., R. L. & P. Ry.
J. G. WOODWORTH,
General Freight Agent, Iowa Central Ry.
W. E. KEEPERS,
General Freight Agent, Ill. Cent. R. R.
R. STOCKHOUSE,
General Freight Agent, R., L. & P. Ry.
HOWARD ELLIOTT,
General Freight Agent, St. L., K. & N. W. and H. & St. J. R. R.'s.
W. M. HOPKINS,
General Freight Agent, M. & St. L. Ry.
S. B. KNIGHT,
General Freight Agent, Wabash R. R.
C. L. WELLINGTON,
General Freight Agent, Wis. Cent. Lines.
J. W. MIDGLEY,
Chairman.

Receipt No. 324.
(Page 123.)

326 Mr. DUNLAP. Mr. Courtr'ght, I see at the top of this circular, which appears to be dated May 18, 1894, Atchison, Topeka & Santa Fe Road. Don't you know, Mr. Courtright, that at that time that railroad was operated by the receivers of the Atchison, Topeka & Santa Fe Railroad Company?

A. Well, I could not state as to that; I don't remember.

Q. Do you know the name of the present company who is operating the old railroad?

A. All I know is that it is called the Atchison, Topeka & Santa Fe Railway Company.

Q. Now, the Atchison, Topeka & Santa Fe Railway Company came into existence in December, 1895; isn't that true?

Mr. DAY. The witness said he don't know.

Mr. DUNLAP. Then you don't know, Mr. Courtright, that the present Atchison, Topeka & Santa Fe Railway Company was a member of the Western Freight Association?

A. I can not say as to that; I don't know when the Atchison, Topeka & Santa Fe Railway Company, or railroad company, as it was called at that time, changed.

Q. Didn't you know there was a change several years ago?

A. Well, I might have known it.

Q. Well, then your statement that the present companies which are members of the Western Trunk Line Committee were members of the Western Trunk Line Association, you don't know whether that was true as to the Atchison, Topeka & Santa Fe Company?

A. I don't know as to whether it is or not.

(Page 124.)

Q. Well, whether it is the same company?

A. I do not know.

Mr. DAY. Now I will offer this exhibit, Joint Circular No. 66 (marked Courtright Exhibit 2), in evidence.

327 Receipt No. 346. Western Freight Association.

Joint circular No. 66 of the Atchison, Topeka & Santa Fe Railroad, Burlington, Cedar Rapids & Northern Railway, Chicago & Alton Railroad, Chicago, Burlington & Northern Railroad, Chicago, Burlington & Quincy Railroad, Chicago & North-Western Railway, Chicago, Milwaukee & St. Paul Railway, Chicago, Rock Island & Pacific Railway, Chicago Great Western Railway, Chicago, St. Paul, Minneapolis & Omaha Railway, Hannibal & St. Joseph Railroad, Illinois Central Railroad, Iowa Central Railway, Kansas City, St. Joseph & Council Bluffs Railroad, Minneapolis and St. Louis Railway, Missouri Pacific Railway, Rock Island & Peoria Railway, St. Louis & San Francisco Railway, St. Louis, Keokuk & North-Western Railroad, Wabash Railroad, Wisconsin Central Lines.

CHICAGO, *June 27, 1894.*

On and after July 9, 1894, a terminal charge of $2.00 per car will be made in addition to the Chicago rates, as shown in the tariffs of the Western Freight Association, on live stock and other freight received from or delivered to the stock yards or industries located on the tracks of the Union Stock Yards Railway, the Indiana State Line Railway, and $3.00 per car on shipments received from or delivered to the Northern Indiana Railroad at Hammond.

The foregoing will apply as an amendment to all tariffs issued by the above-named association; also to all joint tariffs published by connections.

F. C. GAY,
General Freight Agent, A., T. & S. F. R. R.
T. H. SIMONS,
General Freight Agent, B., C. R. & N. Ry.
W. C. STITH,
General Freight Agent, Mo. Pac. Ry.
F. D. RUSSELL,
General Freight Agent, St. L. & S. F. Ry.
H. H. COURTRIGHT,
General Freight Agent, C. & A. R. R.
W. J. C. KENYON,
General Freight Agent, C., B. & N. R. R.
THOS. MILLER,
General Freight Agent, C., B. & Q. R. R.

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H. R. MCCULLOUGH,
General Freight Agent, C. & N. W. Ry.
J. H. HILAND,
General Freight Agent, C., M. & St. P. Ry.
P. C. STOHR,
General Freight Agent, C. G. W. Ry.
J. T. CLARK,
General Freight Agent, C., St. P., M. & O. Ry.
J. M. JOHNSON,
General Freight Agent, C., R. I. & P. Ry.
J. G. WOODWORTH,
General Freight Agent, Iowa Cent. Ry.
W. E. KEEPERS,
General Freight Agent, Ill. Cent. R. R.
R. STOCKHOUSE,
General Freight Agent, R. I. & P. Ry.
HOWARD ELLIOTT,
General Freight Agent, St. L., K. & N. W. and H. & St. J. R. Rs.
W. M. HOPKINS,
General Freight Agent, M. & St. L. Ry.
S. B. KNIGHT,
General Freight Agent, Wabash R. R.
C. L. WELLINGTON,
General Freight Agent, Wis. Cent. Lines.
J. W. MIDGLEY,
Chairman.

Receipt No. 346.
(Page 124.)

Mr. KELLOGG. Mr. Courtright, that was the usual way of issuing the joint tariffs by the various roads, wasn't it?

A. Yes, sir.

Q. And those tariffs were issued for those Missouri River points?
A. Yes, sir.
Q. And the railroads also put out their individual tariffs covering the same points?
A. I think they did.
Q. And so far as you filed tariffs it was on behalf of the individual?
A. So far as we filed tariffs with the Interstate Commission—the Chicago & Alton—we filed our individual tariffs.
Q. You don't understand me. In addition to the filing of the tariffs directly I understood you to say sometimes tariffs were filed also by the association officers.
A. No; I say that the filing of the tariffs in that way by the association officers was on behalf of the various roads that were members.
(Page 125.)

329 CHARLES H. CHAPPELL, being duly sworn, in reply to interrogatories propounded by Mr. Day, testified as follows:
Q. Mr. Chappell, will you please state your name and occupation?
A. Charles H. Chappell; vice-president and general manager of the Chicago & Alton Railroad.
Q. What were your relations to the Chicago & Alton road in 1894, say the first of January to the first of June?
A. Vice-president and general manager.
Q. From the first of April, 1894, were you, on behalf of the Alton road, a member of any joint association—railroad association?
A. Yes, sir.
Q. What?
A. General Managers' Association, Western Freight Association, Western Passenger Association, and quite a number of others.
Q. What roads were parties to the General Managers' Association?
(Objected to as incompetent, irrelevant, and immaterial.)
Mr. KELLOGG. If he is going to try the whole case now—he is trying to get away from the question.
The COURT. I can't say how far he is going to go.
Q. What roads are members of the General Managers' Association?
A. All the roads terminating in Chicago.
Mr. DUNLAP. You mean at that time?
A. At that time, certainly.
Q. Who was the member of that General Managers' Association for the Chicago & North-Western?
(Page 126.)
(Objected to. Objection overruled. To which ruling the defendants then and there excepted.)
A. J. M. Whitmore.
Q. Who is J. M. Whitmore?
A. The general manager.
Q. Who was the member for the Chicago, Rock Island & Pacific?
Mr. BOWERS. Now, if your honor please, I don't want to violate any proprieties of the court room, but it seems to me that when Mr. Day proposes to put a long series of questions to which there is no object it is the duty of the court to make him show his purpose.

The COURT. What is the object of this?

Mr. DAY. Instead of answering that I will ask another question, with leave to return to that subject.

Q. Mr. Chappell, were you a witness before the Interstate
330 Commerce Commission when the case of the Cattle Raisers' Association of Texas against the railroads of Chicago was on hearing?

A. Yes, sir.

Q. Reading from your testimony, Mr. Chappell, in reply to a question propounded by Mr. Brown—Mr. Brown was the general counsel of your road, wasn't he?

A. Yes, sir.

Mr. BOWERS. If your honor please, Mr. Chappell is called by Judge Day as his witness. Mr. Chappell should testify to-day, not repeat his testimony which was taken before the Commission. If Mr. Chappel says something that is not true, or is contradictory of what he said before the Commission, the question will then arise whether Mr. Day can impeach his own witness.

(Page 127.)

The COURT. Get the counsel's question.

Mr. KELLOGG. He proposes to read from the testimony and endeavor to impeach the witness.

Mr. DAY. I disclaim any intention of trying to impeach Mr. Chappell.

Mr. BOWERS. Mr. Chappell knows what our relations are and he knows what I mean.

Mr. DAY. Reading from your testimony before the Interstate Commerce Commission, Mr. Chappel, you are reported as saying, in reply to a question propounded by Mr. Brown:

"The railroads were notified that from and after June 1, 1894, the same trackage would be imposed on live stock that had been imposed on dead freight. These charges were from 40 cents in each direction to 75 cents in each direction, according to distance over the stock yards' tracks. The matter was brought before the General Managers' Association, and we protested to Mr. Sherman, the vice-president, against these charges, and Mr. Sherman stated in our meeting that he believed it was a mistake to impose the charge, but that the directors had voted it and he must impose it, and he himself suggested that the roads had the remedy in their own hands by imposing a charge upon that stock.

Mr. BOWERS. Mr. Sherman says that?

Mr. DAY. Yes; and you (Mr. Chappell) further stated in the same answer that, "Acting upon that suggestion it was decided to make the charge to offset this trackage, and the natural question was what that charge should be, being 80 cents by some roads and $1.50 by others; and it was necessary that the rates should be uniform by all, and for the further reason that we were already charging $2.00 on dead freight, and we
thought that $2.00 on live stock was the proper charge and the
331 one we could legally defend, and for that reason the charge was made $2.00 and went into effect simultaneously with the trackage charge of the stock yards' company."

(Page 128.)

Q. Now, I ask you, Mr. Chappell, to state to the court who composed the General Managers' Association that you referred to in that testimony?

Mr. BOWERS. Objected to as irrelevant and immaterial; the Commission has found that this charge is reasonable, taking into consideration the cost of the service; they are bound by that finding. Now, he is trying to get behind that finding, and show the same testimony which was before the Commission.

The COURT. Now, does this tend to show whether or not, at the time this charge was made, there was that division?

Mr. DAY. It goes a step further, your honor, and it goes to a point I am sure this court has not yet considered in this case. We will show by the record already made in this case, on the findings of fact of the Commission, that this rate was made by a combination between the general managers of the railroads entering the city of Chicago from the West; that there was a combination in restraint of trade; it was a combination denounced by the antitrust law, and these gentlemen come in here and ask a chancellor sitting as a court of equity to join them in a partnership in suppressing competition.

(Whereupon the court sustain the objection of the defendant to the admissibility of the testimony offered; to which ruling petitioner then and there excepted.)

Mr. DAY. I will ask this question—one of my colleagues has suggested that it is pertinent to your honor's suggestion, and then I will ask Mr. Chappell to stand aside. At the time that you imposed this $2.00 charge, I will ask you to state whether or not that was in addition to the old rate.

(Page 129.)

(Objected to as asking Mr. Chappell's construction rather than your honor's of these tariffs.)

The COURT. Do you mean whether it was that much more than they used to charge before?

Mr. DAY. Whether the old rate stood as it was.

The COURT. I think that is just the question which the court is trying to find out.

Mr. DAY. I am asking what they actually did.

Mr. BOWERS. The tariffs show that.

(Objection sustained. To which ruling petitioner then and there excepted.)

Mr. DAY. And now, if the court please, we will offer the records of the Interstate Commerce Commission; the certificate of the secretary is attached.

332 Counsel for complainant then offered in evidence the record of the testimony and exhibits taken before the Interstate Commerce Commerce upon the hearing of this case, containing the evidence and exhibits upon which the findings of the Commission were made in this case.

(Objected to as incompetent.)

Mr. BOWERS. There is no law that makes that evidence; the findings are prima facie evidence, but not their certificate.

The COURT. I would like to ask you one question, whether the evidence is improperly admissible, or whether it is a part of your report? I can't say that I am familiar enough with it to know.

Mr. DUNLAP. It is not referred to in the report.

Mr. BOWERS. The law requires the Commission to make findings which are considered by the court prima facie evidence, not the evidence before the commission itself.

Mr. DAY. I offer it, and if there is any technical objection any of you gentlemen have to make to the form of it, I am willing to discuss that.

The COURT. Objection sustained.

(To which ruling the petitioner then and there excepted.)

While defendants contend, in addition to the general objection that such transcript of the testimony and exhibits taken before the Interstate Commerce Commission is not relevant, competent, or material evidence in this proceeding before the court, that the offer of such transcript was insufficient to bring the transcript even to the attention and inspection of the court, and that such offer was objectionably indefinite in not stating any particular or specific facts which it was proposed to prove, and while defendants do not waive, and are not to be taken as waiving, any of such objections,

It is stipulated that such transcript need not be incorporated in this certificate, and need not be printed, because of its great bulk and of the great expense of printing it, but may be produced and inspected by the circuit court of appeals for any proper purpose in case such inspection is allowable, notwithstanding the foregoing objections.

The foregoing was all of the evidence that was heard, read, or offered on the trial of said cause. And inasmuch as it does not appear of record in said cause, and for the purpose of preserving the same therein, the petitioner prays that this may be signed and sealed as a certificate of evidence taken and heard in the trial of said cause.

Which is done, accordingly, thiss 11th day of January, 1900.

C. C. KOHLSAAT, *Dist. Judge.*

333 And *an* the same day, to wit, the 4th day of December, 1899' there *there* was filed in the office of the clerk of said court the opinion of Hon. Christian C. Kohlsaat, district judge, in the words and figures following, to wit:

In the United States circuit court, northern district of Illinois, northern division.

THE INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO, BURLINGTON & QUINCY R. R. CO. ET AL. } No. 25101.

KOHLSAAT, J.

On the 3rd day of March, 1899, the Interstate Commerce Commission filed its petition in this court for the enforcement of its order made on the 20th day of January, 1898, requiring the defendants, respectively, to "cease and desist, on or before April 1st, 1898, from charging, demanding, collecting, or receiving the sum of $2.00 per carload of live stock, as compensation for terminal services rendered in making delivery of live stock at the stock yards of the Union Stock Yards & Transit Company, in the city of Chicago, State of Illinois, which said charge is found and held in and by said report and opinion of said Commission to be unrea-

This proceeding is had in accordance with the interstate commerce act, and in a proper case this court would grant the prayer of the petition.

Prior to June 1st, 1894, shippers of live stock to Chicago over the lines owned or operated by the respective defendants might, at their option, have had the same delivered without extra charge to the Union Stock Yards, which lie within the limits of that city. To all intents and purposes the rates from Missouri River live-stock centers then absorbed all the terminal charges. The defendants had no adequate facilities for handling stock upon their own lines. The report and findings of the Commission held the stock yards to have been the common depot of the several defendants for the delivery of stock consigned to Chicago. With that finding I concur.

334 Prior to the year 1893, the stock yards company, which owns or controls the tracks required for the movement of freight between the tracks of the several defendants and the stock yards, had given to the defendants the free use of said tracks, the carriers being at the expense only of the actual cost of haulage and handling. In 1893 the stock yards company assumed the entire work of hauling cars from the intersection of said stock yards tracks with defendants' lines, respectively, to the yards, and charged the defendants therefor on the basis of what it had cost defendants theretofore for the same service. On June 1st, 1894, the stock yards company added to this sum a trackage charge of 40 cents per car each way, then for the first time imposed. Partly to meet this new expense and partly to reimburse themselves for the actual outlay theretofore borne by them in delivering at the stock yards, the defendants, respectively, by concerted action, duly filed schedules of new rates to that point with the Commission, as required by the act, whereby they created a rate to points on their lines in Chicago and a terminal charge to cover the expense of delivering stock from their tracks to said stock yards. This terminal charge was fixed at two dollars per car. The trackage charge above referred to amounted to the sum of 80 cents per car. Thus the former through rate to the stock yards, taking the Chicago and terminal rates together, was arbitrarily increased in the sum of one dollar and twenty cents per car. Since that time the Chicago rate has been greatly reduced; so that the question now presented is whether the imposition of the terminal charge of two dollars upon the theretofore existing Chicago rate was unlawful and unjust.

Upon the hearing of defendants' demurrers to said petition, this court held that it was entirely within the power of petitioner in a proper case to require the defendants to cease and refrain from the enforcement of a freight rate which the petitioner found to be unjust and unlawful, even though the Commission has no power to prescribe a rate. Manifestly, if the defendants did effect a segregation of their freight charges from Missouri River and other stock shipping centers to the Chicago stock yards, so that the Chicago rate did not include the expenses or charges incurred in the delivery at the stock yards from the tracks of defendants, and did make a special rate from their tracks to the stock yards, there can be no question of double charge involved. Unless the one or the other of these charges in and of itself is unjust and unlawful, or the same was illegally made, the petitioner's contention must fail. The justness and fairness of the Chicago rate is not called in question in this proceeding.

The act provides in what manner rates may be changed. The defendants have complied with that requirement, and there can
335 be no doubt but that they have, as they legally might, divided up or segregated their Chicago and terminal charges. That such segregation could have been legally accomplished, and was both advisable and desirable, was unequivocally held in the case of Walker v. Keenan, 73 Fed. 758. This, too, is the spirit of the Covington Stock Yards case. It is just and reasonable that one who ships to points on the tracks of the several defendants in Chicago should not be required to pay a rate which is based in part upon the actual cost to the carrier of delivery at the stock yards to the point to which he ships. He should not be required to go to the stock yards to get his money's worth.

Therefore the only question remaining is as to the lawfulness and justice of this terminal charge in and of itself. The petitioner admits that if it is to be considered by itself, it must be held to be reasonable, and therefore just and lawful. Having held that it must be so considered, there remains no alternative but to deny the prayer of said petition, and the same is denied. In view of the above, it becomes unnecessary to pass upon the question as to whether or not this cause is properly within the interstate commerce act.

(Endorsed:) Filed Dec. 4, 1899. S. W. Burnham, clerk.

Afterwards, to wit, on the 4th day of December, 1899, being one of the days of the October adjourned term of said court, in the record of proceedings thereof in said entitled cause before Hon Christian C. Kohlsaat, district judge, appears the following entry, to wit:

336 *Order.*

Circuit court of the United States, northern district of Illinois, northern division.

MONDAY, *December 4, 1899.*

Present, Hon. Christian C. Kohlsaat, district judge.

INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON AND QUINCY RAILroad Company, The Chicago and Great Western Railway Company, The Chicago and North-Western Railway Company, The Chicago, Milwaukee and St. Paul Railway Company, The Chicago and Alton Railroad Company, The Chicago, Rock Island and Pacific Railway Company, The Atchison, Topeka and Santa Fe Railway Company, The Wabash Railroad Company, The Illinois Central Railroad Company. } 25101.

The court, having considered and being now fully advised in the premises, finds the equities for the defendants. It is now hereby ordered, adjudged, and decreed by the court that the bill of complaint filed herein be and the same hereby is dismissed for want of equity. And the complainant in open court prays an appeal.

And on the same day, to wit, the 4th day of December, A. D. 1899, there was filed in the office of the clerk of said court the assignments of error of complainant in the following words and figures, to wit:

337 In the circuit court of the United States of America for the northern district of Illinois, northern division.

INTERSTATE COMMERCE COMMISSION
vs.
C. B. & Q. R. R. CO. ET AL. } No. 25101.

And now comes the complainant in the above-entitled cause and files the following assignment of errors upon which it will rely in its appeal from the decree made by this honorable court on the 4th day of December A. D. 1899.

I. The court erred in dismissing said suit and entering a final decree therein in favor of the said defendants.

II. The court erred in not making, rendering, and entering a decree in favor of the said complainant and against the defendants, as prayed for in the petition or bill of complaint filed herein.

III. The court erred in overruling the objections of counsel for complainant at the trial of said cause to the evidence of the defendants and in admitting the said evidence.

IV. The court erred in overruling the objections of counsel for complainant at the trial of said cause to the documentary evidence of the defendants, being copies of the schedules of rates of the said defendants.

V. The court erred in overruling the objections of counsel for the complainant to the oral testimony of the defendants' witnesses.

VI. The court erred in refusing to permit counsel for complainant to introduce further evidence in said cause.

VII. The court erred in sustaining the objections of counsel for defendants to the testimony of the complainant.

VIII. The court erred in finding in its decree and judgment that the said two-dollar terminal charge in question in said suit was not unreasonable, unjust, and unlawful.

IX. The court erred in failing to find that said two-dollar terminal charge was made in addition to the through rate charge by said defendants, and that the said through rate charge covered a delivery of live stock at the Union Stock Yards, Chicago, Illinois.

X. The court erred in finding that the said rates of the defendant companies on live stock were segregated rather than added to, by the said two-dollar terminal charge.

338 XI. The court erred in finding that the live-stock rates of the defendant companies since June, 1894, have been decreased.

XII. The court erred in not finding that the said live-stock rates of the defendant companies had advanced.

XIII. The court erred in not holding that this combination and arrangement between the defendant companies, in reference to the imposition of the two-dollar terminal charge, was an illegal combination under the anti-trust or Sherman law of the United States of 1890.

XIV. The court erred in not holding that such combination—being a violation of the said anti-trust law—was fatal to this case, and in not

holding, that on account of such illegal combination, the complainant's bill should be sustained.

XV. The court erred in finding that the defendant companies do not carry their live stock from the junction of their respective railroads with the tracks of the Union Stock Yards & Transit Company to the Union Stock Yards with their own power, and that they have not done so since June, 1894.

Wherefore the said complainant and appellant prays that the judgment of the circuit court be reversed, and such directions be given that full force and efficacy may enure to said complainant by reason of the matters and things set up in its bill of complaint or petition in said cause.

S. H. BETHEA,
Attorney of the United States, Attorney for Complainant.

(Endorsed:) Filed Dec. 4, 1899. S. W. Burnham, clerk.

Afterwards, to wit, on the 7th day of December, A. D. 1899, there was filed in the office of the clerk of said court the petition for appeal of complainant, in the words and figures following, to wit:

339 In the circuit court of the United States of America for the northern district of Illinois, northern division.

INTERSTATE COMMERCE COMMISSION
vs.
C., B. & Q. RAILROAD COMPANY ET AL. } No. 25101.

To the Honorable CHRISTIAN C. KOHLSAAT, *Judge of said Court:*

The complainant in the above-entitled cause, conceiving itself aggrieved by the order, decree, and judgment made and entered by the above-named court in the above-entitled cause on the 4th day of December, A. D. 1899, wherein and whereby it dismissed the complainant's bill of complaint and refused the prayer of its bill and petition, does hereby appeal from said judgment to the United States circuit court of appeals for the seventh circuit, for the reasons set forth in the assignment of errors, which is filed herewith, and it prays that its petition for said appeal may be allowed; that no bond be required of it upon appeal, because it is a department of the Government, under section 1000 of the Revised Statutes of the United States; that forty days be given it in which to file its certificate of evidence or bill of exceptions, and that a transcript of the record, proceedings, and papers upon which said decree was made, duly authenticated, including said certificate of evidence or bill of exceptions, may be sent to the United States circuit court of appeals for the seventh circuit.

S. H. BETHEA,
United States Attorney, Attorney for Complainant.

(Endorsed:) Filed Dec. 7, 1899. S. W. Burnham, clerk.

And on the same day, to wit, the 7th day of December, 1899, being one of the days of the October adjourned term of said court, in the record

of proceedings thereof in said entitled cause, before Hon. Christian C. Kohlsaat, district, appears the following entry, to wit:

340 *Order.*

Circuit court of the United States, northern district of Illinois, northern division.

THURSDAY, *December 7, 1899.*

Present: Hon. Christian C. Kohlsaat, district judge.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO, BURLINGTON AND QUINCY RAILROAD Company et al. } 25101.

The foregoing petition on appeal is granted, and the claim of appeal therein made is allowed without bond, and forty days is hereby given the complainant in which to file its certificate of evidence or bill of exceptions as therein prayed; and the clerk of this court is directed to send the transcript of the record, etc., to the United States circuit court of appeals for the seventh circuit.

NORTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION, *ss:*

I, S. W. Burnham, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all proceedings had in the cause entitled:

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO, BURLINGTON AND QUINCY RAILROAD Company et al. } In equity. Gen. No. 25101.

as appears from the records and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this 7th day of February, A. D. 1900.

[SEAL.] S. W. BURNHAM, *Clerk.*

341 At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court rooms, in the city of Chicago, in said seventh circuit, on the third day of October, 1899, of the October term, in the year of our Lord one thousand eight hundred and ninety-nine, and of our independence the one hundred and twenty-fourth year.

And afterwards, to wit, on the eighth day of December, 1899, in the October term last aforesaid, came the appellant, by its counsel, Mr. S. H. Bethea, and filed in the office of the clerk of this court a certain motion, said motion being in the words and figures following, to wit:

In the United States circuit court of appeals for the seventh circuit.

INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
C. B. & Q. R. R. CO. ET AL., APPELLEE.

And now comes the appellant in the above-entitled cause, by
342 S. H. Bethea, United States attorney, its attorney, and moves the court for a rule upon the clerk of the United States circuit court of appeals for the seventh circuit to docket said cause, without an appeal bond having been filed in the court below, without a deposit for costs and without a bond for costs in this court.

S. H. BETHEA,
U. S. Attorney.

(Endorsed:) Filed Dec. 8, 1899. Edward M. Holloway, clerk.

And afterwards, on the same day, to wit, on the eighth day of December, 1899, in the October term last aforesaid, the following proceedings were had and entered of record, to wit:

FRIDAY, *December 8, 1899.*

Before Hon. William A. Woods, presiding judge.

INTERSTATE COMMERCE COMMISSION
vs.
C. B. & Q. R. R. CO. ET AL.

Upon motion of counsel for appellant, it is ordered that this cause be docketed without an appeal bond having been filed in the circuit court of the United States for the northern district of Illinois, without a deposit for costs and without a bond for costs in this court.

343 And afterwards, to wit, on the twenty-sixth day of February, 1900, in the October term last aforesaid, came one of the appellees by its counsel, Mr. Chester M. Dawes, and filed in the office of the clerk of this court his appearance, said appearance being in the words and figures following, to wit:

United States circuit court of appeals for the seventh circuit, October term, 1899.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE CHICAGO, BURLINGTON AND QUINCY RAILROAD Company et al., appellees. } No. 665.

The clerk will enter my appearance as counsel for the appellees.

CHESTER M. DAWES.

(Endorsed:) Fuled Feb. 26, 1900. Edward M. Holloway, clerk.

And afterwards, on the same day, to wit, on the twenty-sixth day of February, 1900, in the October term last aforesaid, came one of the

appellees by its counsel, Mr. Robert Dunlap, and filed in the office of the clerk of this court his appearance, said appearance being in the words and figures following, to wit:

United States circuit court of appeals for the seventh circuit, October term, 1899.

344 THE INTERSTATE COMMERCE COMMISSION, appellant,
vs.
THE CHICAGO, BURLINGTON AND QUINCY RAILROAD Company et al., appellees. } No. 665.

The clerk will enter my appearance as counsel for the appellees.

ROBERT DUNLAP.

(Endorsed:) Filed Feb. 26, 1900. Edward M. Holloway, clerk.

And afterwards, on the same day, to wit, on the twenty-sixth day of February, 1900, in the October term last aforesaid, came one of the appellees by its counsel, Mr. Sidney F. Andrews, and filed in the office of the clerk of this court his appearance, said appearance being in the words and figures following, to wit:

United States circuit court of appeals for the seventh circuit, October term, 1899.

THE INTERSTATE COMMERCE COMMISSION, appellants,
vs.
THE CHICAGO, BURLINGTON & QUINCY RAILROAD Company et al., appellees. } No. 665.

The clerk will enter my appearance as counsel for the appellees.

SIDNEY F. ANDREWS,
For Ill. Cent. R. R. Co.

(Endorsed:) Filed Feb. 26, 1900. Edward M. Holloway, clerk.

And afterwards, on the same day, to wit, on the twenty-sixth day of February, 1900, in the October term last aforesaid, came one of the appellees by its counsel, Mr. Wells H. Blodgett, and filed in the office of the clerk of this court his appearance, said appearance being in the words and figures following, to wit:

345 United States circuit court of appeals for the seventh circuit, October term, 1899.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE CHICAGO, BURLINGTON & QUINCY RAILROAD Company et al., appellees. } No. 665.

The clerk will enter my appearance as counsel for the appellees.

WELLS H. BLODGETT.

(Endorsed:) Filed Feb. 26, 1900. Edward M. Holloway, clerk.

And afterwards, to wit, on the twenty-seventh day of February, 1900, in the October term last aforesaid, came one of the appellees, by its counsel, Mr. W. T. Rankin, and filed in the office of the clerk of this court his appearance, said appearance being in the words and figures following, to wit:

United States circuit court of appeals for the seventh circuit, October term, 1899.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY et al., appellees. } No. 665.

The clerk will enter my appearance as counsel for the appellees.
W. T. RANKIN.

(Endorsed:) Filed Feb. 27, 1900. Edward M. Holloway, clerk.

346 And afterwards, on the same day, to wit, on the twenty-seventh day of February, 1900, in the October term last aforesaid, came one of the appellees, by its counsel, Mr. Robert Mather, and filed in the office of the clerk of this court his appearance, said appearance being in the words and figures following, to wit:

United States circuit court of appeals for the seventh circuit, October term, 1899.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY et al., appellees. } No. 665.

The clerk will enter my appearance as counsel for the appellees.
ROBERT MATHER.

(Endorsed:) Filed Feb. 27, 1900. Edward M. Holloway, clerk.

And afterwards, on the same day, to wit, on the twenty-seventh day of February, 1900, in the October term last aforesaid, came one of the appellees, by its counsel, Mr. Robert Dunlap, Mr. Frank B. Kellogg, and Mr. Lloyd W. Bowers, and filed in the office of the clerk of this court their appearance, said appearance being in the words and figures following, to wit:

United States circuit court of appeals for the seventh circuit, October term, 1899.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY et al., appellees. } No. 665.

347 The clerk wili enter my appearance for the appellees.
ROBERT DUNLAP,
FRANK B. KELLOGG,
LLOYD W. BOWERS,
Office of Lloyd W. Bowers, Chicago, Ill.

[Endorsed:] Filed Feb. 27, 1900. Edward M. Holloway, clerk.

And afterwards, to wit, on the 28th day of February, 1900, in the October term last aforesaid, came one of the appellees, by its counsel, Mr. William Brown and Mr. M. J. Scrafford, and filed in the office of the clerk of this court their appearances, said appearances being in the words and figures following, to wit:

United States circuit court of appeals for the seventh circuit, October term, 1899.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY et al. } No. 665.

The clerk will enter our appearances as counsel for the appellees.

WILLIAM BROWN and
M. J. SCRAFFORD.

(Endorsed:) Filed Feb. 28, 1900. Edward M. Holloway, clerk.

And afterwards, on the same day, to wit, on the 28th day of
348 February, 1900, in the October term last aforesaid, came one of the appellees, by its counsel, Mr. E. D. Kenna, and filed in the office of the clerk of this court his appearance, said appearance being in the words and figures following, to wit:

United States circuit court of appeals for the seventh circuit, October term, 1899.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY , appellees. } No. 665.

The clerk will enter my appearance as counsel for the appellees.

E. D. KENNA.

(Endorsed:) Filed Feb. 28, 1900. Edward M. Holloway, clerk.

And afterwards, to wit, on the eighth day of March, 1900, in the October term last aforesaid, came one of the appellees, by his counsel, Mr. George R. Peck and Mr. Charles B. Keeler, and filed in the office of the clerk of this court their appearance, said appearance being in the words and figures following, to wit:

United States circuit of appeals for the seventh circuit, October term, 1899.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY et al, appellees. } No. 665.

349 The clerk will enter my appearance as counsel for the appellee, Chicago, Milwaukee and St. Paul Ry. Co.

GEO. R. PECK, and
CHAS. B. KEELER.

(Endorsed:) Filed Mar. 8, 1900. Edward M. Holloway, clerk.

And afterwards, to wit, on the twenty-sixth day of March, 1900, there was filed in the office of the clerk of this court a certain stipulation, said stipulation being in the words and figures following, to wit:

In the United States circuit court of appeals for the seventh circuit.

INTERSTATE COMMERCE COMMISSION
vs.
C. B. & Q. R. R. Co. ET AL. } No. 665.

It is stipulated by and between the parties to the above-entitled cause that the appellant shall have until April 6th to file its brief and that the appellee shall have until April 30th to file their briefs in the above-entitled cause.

March 15, 1900.

S. H. BETHEA,
Attorney for Appellant.

ROBT. DUNLAP,
F. B. KELLOGG, and
L. W. BOWERS,
Attorney for Appellee.

(Endorsed:) Filed Mar. 26, 1900. Edward M. Holloway, clerk.

350 And afterwards, on the same day, to wit, on the twenty-sixth day of March, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

MONDAY, *March 26, 1900.*

Before Hon. William A. Woods, presiding judge.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO, BURLINGTON AND QUINCY RAILROAD Company et al. } 665.

Appeal from the circuit court of the United States for the northern district of Illinois, northern division.

Upon filing of stipulation of counsel it is ordered that the appellant shall have until April 6th to file its brief and the appellees shall have until April 30th to file their briefs in the above-entitled cause.

And afterwards, to wit, on the first day of May, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, *May 1, 1900.*

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. Christian C. Kohlsaat, district judge.

351 Order: It is ordered by the court that Christian C. Kohlsaat, judge of the district court of the United States for the northern

district of Illinois, be designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Kohlsaat appeared and took his seat as a member of said court.

And afterwards, on the same day, to wit, on the first day of May, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, *May 1, 1900.*

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. Christian C. Kohlsaat, district judge.

INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON AND QUINCY RAILROAD Company et al. } 665.

Appeal from the circuit court of the United States for the northern district of Illinois, northern division.

It is ordered by the court that this cause be, and the same is hereby, passed.

352 And afterwards, to wit, on the seventh day of May, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

MONDAY, *May 7, 1900.*

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. James G. Jenkins, circuit judge; Hon. William H. Seaman, district judge.

Order: It is ordered by the court that William H. Seaman, judge of the district court of the United States for the eastern district of Wisconsin be designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Seaman appeared and took his seat as a member of said court.

And afterwards, to wit, on the seventeenth day of May, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

THURSDAY, *May 17, 1900.*

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. William H. Seaman, district judge.

353 INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO, BURLINGTON & QUINCY RAILROAD Company et al. } 665.

Appeal from the circuit court of the United States for the northern district of Illinois, northern division.

It is ordered by the court that this cause be, and the same is hereby, set down for hearing June 14, 1900.

And afterwards, to wit, on the fourteenth day of June, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

THURSDAY, *June 14, 1900.*

Court met pursuant to adjournment.

Present: Hon. Henry B. Brown, circuit justice, presiding; Hon. William A. Woods, circuit judge; Hon. Peter S. Grosscup, circuit judge; Hon. Romanzo Bunn, district judge.

Before: Hon. Henry B. Brown, circuit justice; Hon. William A. Woods, circuit judge; Hon. Peter S. Grosscup, circuit judge.

354 INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON AND QUINCY Railroad Company et al. } 665.

Appeal from the circuit court of the United States for the northern district of Illinois, northern division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. *Mr.* S. H. Cowan and Mr. W. A. Day, counsel for appellant, and by Mr. L. W. Bowers, counsel for appellees, and the court having heard the same takes this matter under advisement.

And afterwards, to wit, on the fifteenth day of June, 1900, in the October term last aforesaid, there was filed in the office of the clerk of this court the opinion of the court in the above-entitled cause, said opinion being in the words and figures following, to wit:

355 In the United States circuit court of appeals for the seventh circuit. No. 665. May session, A. D. 1900.

INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE CHICAGO, BURLINGTON & QUINCY RAILROAD Company et al.

Appeal from the circuit court of the United States for the northern district of Illinois, northern division.

Before Brown, circuit justice, and Woods and Grosscup, circuit judges.

BROWN, circuit justice, delivered, orally, the opinion of the court:

We have come to the conclusion that this case must be affirmed upon the authority of Walker *v.* Keenan, 73 F. R., 755.

While the facts of the two cases differ in some immaterial particulars, the principles involved are practically the same, and a proper deference to the prior decisions of this court requires a similar conclusion.

As this is the first case involving the validity of the terminal charges which has been called to my attention, I have thought it proper to state briefly my reasons for concurring in the conclusion of the court in the prior case.

I have no doubt it is the general duty of railway companies to provide proper facilities for the reception and discharge of freight and passengers at each of their regular stations upon the line of the road. The location of such stations must be determined largely, if not exclusively, by the railway companies themselves. Having regard for their own interest,
356 they would naturally provide such facilities as near the center of the town as they are able, having regard to the price of real estate, the convenience of their customers, and their connection with other railways.

The character of these terminal facilities must be determined by the custom of the place and by the demands of the traffic. So far as passengers are concerned, they usually consist of a platform, a depot for the reception of passengers, and a baggage room for the accommodation of luggage. Upon this platform passengers alight, and from that moment the responsibility of the company as a carrier ceases. They separate to different parts of the city, taking their own conveyances, and their luggage is deposited in the baggage room, remaining subject to their call for a reasonable time.

So far as what is known as dead freight is concerned, a freight depot is usually provided in which the freight is deposited, and notice given the consignee or, under the custom of some places, the property is delivered personally to the consignee, for which an extra charge is made.

But suppose there be an exceptional kind of traffic, as live cattle. I should have no doubt that if the transportation of such cattle became a substantial part of the traffic of the road, terminal facilities should be provided for them; and if it were the custom of the place for the consignee of cattle to call and drive them away, pens should be built for their immediate confinement until the consignee can be apprised of their arrival and a sufficient time has elapsed for him to remove them. Until 1865 that seems to have been the custom in Chicago, where there were four or five cattle yards near the principal railway stations. The record does not show whether the consignee came there and drove them away, or whether they were marketed and slaughtered there; but this is immaterial so far as the duties of the railway company was concerned. So it is usual in the stock-raising portions of the country to provide cattle pens for the detention of cattle until they are laden on board the cars, and sometimes for their delivery by the railway company in those yards.

While I do not think railway companies would be bound to furnish terminal facilities of this kind for an occasional horse or perhaps even for an occasional and wholly exceptional carload of live stock, yet if it became a substantial part of the traffic I have no doubt provision should be made for their reception.

In 1865 the Union Stock Yards were organized, a large area of lands purchased, and separate tracks laid by the Stock Yards Company, connecting with practically all the railways running to Chicago. From this time the demand for separate terminal facilities at each of these railways
357 seems to have ceased, and all cattle were consigned for delivery at the stock yards, not for the purpose of being claimed there by the consignee, but for the purpose of finding a market for them. Here all the cattle consigned to Chicago are deposited for slaughter or for further shipment; and great slaughtering houses have been erected

in the vicinity of the yards for the disposition of the cattle. Providing a market for cattle is certainly no part of the business of the railway company; and I think, therefore, any extra expense occasioned from the time the cars containing the cattle leave the tracks of the company and until they arrive at the stock yards and the empty cars are returned, the company is entitled to make an additional terminal charge equivalent to the expense occasioned to them by providing these extra facilities.

Prior to June 1, 1894, the railway companies seem to have assumed this burden themselves; but at this time a trackage was imposed by the stock yards of from 40 to 75 cents each way upon every car going and returning from the tracks of the railway company to the stock yards. It is insisted that as this is the only extra expense then occasioned, any charge beyond that was unreasonable and improper. I do not think that necessarily follows. While the imposition of this trackage charge by the Union Stock Yards was doubtless the immediate occasion for a reformation of its tariff, the railway companies were then at liberty to adopt a new schedule with relation to these terminal facilities and charge what they actually cost them.

The evidence is that it costs some railways a trifle less than $2 and some considerable more than that. The average seems to have been somewhat more than $2. But we think it was proper for the railway companies, whether the expense to the companies were a few cents more or less, to adopt this amount as an approximate charge; and that their action in so doing should be sustained.

In the limited time at my disposal I find myself unable to file a written opinion, and as the case will doubtless be appealed to the court of last resort, it seems quite unnecessary to do so.

The decree of the circuit court is therefore affirmed.

June, 1900.

358 GROSSCUP, circuit judge, dissenting.

Prior to 1865 the railways entering Chicago had four separate places for the delivery of live stock, each equipped with the necessary facilities. Considering, for obvious reasons, a union of these facilities desirable, the Union Stock Yards were established by the railways, though as a separate corporation, with such lines of intervening railway as put the yards in connection with all the roads centering in Chicago. It is substantially undisputed that from the consolidation of these delivery stations until 1894 the chutes, pens, and other equipment at the new stock yards were the delivery station for live stock of each of the defendant railways; that, although owned by a separate company, no extra compensation was charged for the use of the intervening tracks or the unloading facilities; that the other live-stock stations were abandoned; that no separate stations, except perhaps in mere semblance, have since been established; and that by this long course of dealing the shipping public has come to look upon the Union Stock Yards as the destination of cattle shipped to Chicago.

In June, 1894, the Union Stock Yards having passed largely from the ownership of the railways to outside parties, a minimum trackage charge of forty cents per car was imposed upon the railways by the Stock Yards

required by the interstate commerce act, a paragraph to the effect that upon all live stock or other freight received from or delivered to the stock yards a terminal charge of two dollars per car would be thereafter made in addition to the flat Chicago rates. It is the lawfulness and reasonableness of this charge that is the subject-matter of this case.

The precise question, so far as it relates to the lawfulness of the charge, has been before the courts of this circuit three times. In the first case, in the circuit court, Union Trust Company v. A. T. & S. F. Ry. Co., 64 Fed., 992, it was held that as a matter of public policy a charge for freight must be held to cover the entire service of the carrier from depot to depot, inclusive; that such service and charge include not only actual carriage, but also the necessary facilities for loading and unloading; that the service being a single one the compensation is likewise single and in law incapable of division; that the carrier cannot make up its bill of charges in items—one for loading, one for carriage, one for personal service of attendants, one for delivery, etc. The ruling in that case was supposed to be founded upon the Covington Stock Yards case, 139 U. S., 128.

The case was reviewed in the circuit court of appeals under the title of Walker v. Keenan, 73 Fed., 755, where it was in effect held
359 that although as incidental to its business of transporting cattle a railway company must provide the means for loading and unloading, there is no reason in law or in the nature of things why the compensation may not be apportioned; that it is lawful, other considerations aside, that a charge may be made for the loading, another and separate charge for the carriage, and still another for the unloading and delivery. The compensation to be received was not looked upon in this decision as a single charge, but rather as an aggregation of such separate charges as being reasonable in themselves may have been properly inserted in the published schedules.

In the present decision the majority of the court hold it to be the general duty of the railway companies to provide proper facilities for the reception and discharge of freight and passengers at each of their regular stations; and, inferentially, as I read the opinion, that no extra charge may be made for these unloading facilities. But live stock is regarded as an exceptional kind of traffic, and its transportation to, and delivery at the stock yards, as something superadded to the general undertaking of the railway companies to transport live stock from the stations of initiation to Chicago. This opinion seems to me to shift the ground upon which Walker v. Keenan, supra, was decided, and while sustaining the general proposition upon which Union Trust Company v. A., T. & S. F. Ry. Co. was decided, to hold that delivery of live stock at the stock yards is an exception to the requirements of the general rule. In view of these rulings, and especially of the change of ground taken by the majority opinion, I look upon the question involved as a more or less open one, and have thought it not improper to restate, in substance, the grounds upon which, in the circuit court, I decided the case of Union Trust Company v. A., T. & S. F. Ry. Co., and upon the basis of which I am constrained to dissent from the decision in this case.

As common carriers of freight and passengers, railway companies come in touch with every character of shipper and traveller. They deal alike with the unintelligent and the intelligent; with people inexperienced

in matters of traffic, as well as with the experienced; with people in haste and uninquiring, as well as with people deliberate and careful.

The usual passenger buys his ticket at the station where he goes aboard, expecting that it will carry him to the general passenger station in the city of destination. He does not consult the rate sheet, and, least of all, does he inquire if the line over which he travels may or may not include rails and stations belonging to another company. The usual shipper is remote from the station of destination. He is unacquainted with
360 local conditions, especially if that station be a great city spreading over a large territory. He has in mind a single place of delivery; and when he inquires respecting the rate of freight, unquestionably conceives that the payment of the sum named will lay down his goods in the general depot of delivery. However much, as a careful man, he ought, perhaps, to consult the posted rates, he does not, as a matter of fact, consult them. Both traveller and shipper, with perhaps a few exceptions, accept without further inquiry the railway agent's general statement respecting the company's charge, and act upon the presumption that the charge is from depot to depot inclusive.

Now what, upon such a state of facts, irrespective of a divisional posted rate, would be the measure of the carrier's undertaking? Could it rightly compel the passenger to alight at a suburban station, geographically within Chicago, and, therefore, in letter, within the terms of its obligation? Could it deposit the freight at some depot other than its general depot, though such other depot was within the city limits? No one, I think, will so contend. The tangible, visible facts relating to the usual places of depositing passengers and freight constitute an element, though unexpressed, in the carrier's undertaking, and its contract will be construed as if such element had been plainly embodied in the ticket or bill of lading. Any other interpretation would violate a primary rule in arriving at the terms of consent between parties.

The posting of a divisional rate—one item for carriage and another for delivery facilities—may be regarded technically as a purposed exclusion of this unexpressed element, but in practice the traveller and shipper would proceed upon the same conception as if there had been no posting and the rate had remained single. They would still be guided, notwithstanding the divisional rate posted—at least in large numbers—by the visible facts relating to the company's general depot facilities at the city of destination, and would still look upon the flat rate named as inclusive of delivery, as well as of carriage. Passengers from New York, having paid their fare to Chicago, would feel outraged if, once within the city limits, they were compelled to pay an additional so-called terminal charge, or disembark at a suburban station. The shipper of freight would experience the same feeling, if, in the absence of directions to the contrary, his goods were delivered at some place other than the carrier's general depot. The fact that a divisional rate was formerly posted would not disabuse their expectations in time to adjust their course to the real rate thus imposed.

The law, in my judgment, upon considerations of public policy,
361 comes to their rescue. It requires the carrier to do what, in view of this conception in the public mind, respecting travel and shipment—a conception natural and almost universal—the carrier ought, in

good conscience, to do. An enforced single charge is no hardship to the carrier; it prevents infinite misunderstanding and inconvenience among its patrons. It is the only method that, treating the carrier fairly, at the same time fairly subserves the interests of the public. It is simply a recognition of an almost universal fact—a fact that is not undone by special provisions written into unnoticed tariff schedules. If the law, irrespective of the carrier's wish or contract, in subserving the public interests, interferes to impose a duty that the appliances shall be reasonably sufficient, and that the freight shall be carried in the customary mode, I can see no reason why, upon analogous motives, it should not recognize the convenience and the justice of the rule here insisted upon, and impose a duty in accordance.

The opinion of the majority, in substance, concedes this general proposition, but escapes its application to the case under consideration, by holding that live stock is an exceptional character of traffic; and that transportation to the stock yards is in the nature of a diversion, in the interest of the shipper, from the carrier's general depot to the market designated by the shipper. In what respect the traffic is exceptional is not stated. It requires, of course, cars of a special character, and delivery facilities different from those provided for dead freight; but the difference between live stock and dead freight, in these respects, is not so wide as the difference between the equipment necessary to the carriage and delivery of passengers and the equipment essential to the carriage and delivery of dead freight. Nor is the live stock shipped to Chicago a sporadic kind of traffic, turning up a carload to-day, and possibly not another carload for days to come; it is shown that more than three hundred thousand carloads of live stock (an average of one thousand carloads daily) come into the stock yards each year. No other single source of revenue to the railway companies is perhaps so large and so unfailing. This kind of exceptionalness, it seems to me, emphasizes rather than diminishes the reason why the rule should be applied to live stock as well as to other freight.

The other reason stated for making live stock an exception—that it is a diversion in the interest of the shipper to the shipper's market—ignores the facts found by the Commission and the undisputed history of the yards. When, in 1865, the yards were established, as the consolidated live stock station of the railway companies, there were at that place no packing houses and no established markets. The locality selected
362 was in the country, centrally located, it is true, for the railways, but still unoccupied by any industry. In course of time, as doubtless the railways anticipated, a market grew up around the station. Here, as elsewhere in industrial evolution, like attracted like. The railways in establishing these yards did not go to the market; the market came to the railways.

As the general Chicago depot for the delivery of live stock the stock yards remain to-day what they were the day of their establishment, only grown larger. It would be lawful, doubtless, to change this station if it were done in substance, not in mere semblance, but the railway companies have not yet chosen to make the change. Why does it not remain their general depot for the delivery of live stock in as full a sense as upon the day it was first established, before the surrounding industries

had yet gathered, and in as full a sense as during the thirty years succeeding? It is because the carriers do not own the chutes and pens and the intervening tracks. The same may be said of many passenger lines that come only to the city limits, passing from there over rails and into the stations belonging to a terminal company. Is it because they pretend to be ready to deliver live stock from their own rails, should the shipper wish? That would be the substitution of a myth, known only on paper, for an actuality, known by the public at large. Is it because they have sold out their holdings in the yards and the intervening rails? That will not entitle them to divide the charge for a service between depot and depot. If on the day the stock yards were established, before a market was there, they became the depot at which the shipper was entitled to have his stock delivered as a part of the service undertaken, nothing has since transpired to change either the right of the shipper or the obligation of the carriers.

But assuming that the railways went to the markets and established their stations for delivery there, is it any the less in the public mind their general depot in Chicago for the delivery of live stock? It seems clear to me that the presence of a market about the stations—the only market of the kind in Chicago—must be taken as a forceful fact definitely fixing in the mind of the shipper the locality of the delivery facilities. Where other than the stock yards, in view of these circumstances, would the shipper reasonably suppose his consignments would go? Would it not take the clearest character of information to convince him that in the absence of a special direction the cattle would be unloaded in some unknown place in the city? In this fact, that in the very nature of things live stock must go to the stock yards, will be found strong additional reason for, rather than against, the rule that there should be but a single charge from depot to depot, inclusive.

363 The general rule invoked is a salutary one, and should not be frittered away upon exceptions not founded upon cogent reasoning. Once open the door to exceptions on easy hinges and a multitude will find their way in, until, indeed, the rule itself will have become the exception.

364 And afterwards, on the same day, to wit, on the fifteenth day of June, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

FRIDAY, *June 15, 1900.*

Court met pursuant to adjournment.

Present: Hon. Henry B. Brown, circuit justice, presiding; Hon. William A. Woods, circuit judge; Hon. Peter S. Grosscup, circuit judge; Hon. Romanzo Bunn, district judge.

Before: Hon. Henry B. Brown, circuit justice; Hon. William A. Woods, circuit judge; Hon. Peter S. Grosscup, circuit judge.

INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON AND QUINCY RAILroad Company, The Chicago and Great Western Railway Company, The Chicago and North-Western Railway Company, The Chicago, Milwaukee and St. Paul Railway Company, The Chicago and Alton Railroad Company, The Chicago, Rock Island and Pacific Railway Company, The Atchison Topeka and Santa Fe Railway Company, The Wabash Railroad Company, and The Illinois Central Railroad Company. } 665.

Appeal from the circuit court of the United States for the northern district of Illinois, northern division.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Illinois, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and
365 decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed.

And afterwards, on the same day, to wit, on the fifteenth day of June, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

FRIDAY, *June 15, 1900.*

Court met pursuant to adjournment.

Present: Hon. Henry B. Brown, circuit justice, presiding; Hon. William A. Woods, circuit judge; Hon. Peter S. Grosscup, circuit judge; Hon. Romanzo Bunn, district judge.

Before: Hon. Henry B. Brown, circuit justice; Hon. William A. Woods, circuit judge; Hon. Peter S. Grosscup, circuit judge.

INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO, BURLINGTON AND QUINCY RAILroad Company et al. } 665.

Appeal from the circuit court of the United States for the northern district of Illinois, northern division.

Now, this day come the Interstate Commerce Commission, appellant, by Mr. W. A. Day, its counsel, and moves the court that an appeal to the Supreme Court of the United States be allowed in this cause without the filing of an appeal bond; and the court, having heard the same, orders that this appeal be, and the same is hereby, allowed without the filing of an appeal bond.

366 And afterwards, to wit, on the thirteenth day of July, 1900, in the October term last aforesaid, came the appellant by its counsel, Mr. S. H. Bethea, and filed in the office of the clerk of this court its

assignment of errors, said assignment of errors being in words and figures following, to wit:

United States circuit court of appeals, seventh circuit.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
v.
THE CHICAGO, BURLINGTON AND QUINCY RAILROAD Company, The Chicago Great Western Railway Company, The Chicago and North-Western Railway Company, The Chicago, Milwaukee and St. Paul Railway Company, The Chicago and Alton Railroad Company, The Chicago, Rock Island and Pacific Railway Company, The Atchison, Topeka and Santa Fe Railway Company, The Wabash Railroad Company, The Illinois Central Railroad Company.

Assignment of errors.

And now, on the 15th day of June, 1900, comes the Interstate Commerce Commission, by S. H. Bethea, United States attorney for the northern district of Illinois, and says that the decree in the above-entitled cause is erroneous and against the rights of appellant for the following reasons:

First. In that the said circuit court of appeals ordered that the decree of the circuit court of the United States for the northern district of Illinois, entered on the day of , 1899, wherein it was adjudged that the petition of appellant herein be dismissed, should be in all things affirmed.

367 Second. In that the said circuit court of appeals did not order and adjudge that the decree of the circuit court of the United States for the northern district of Illinois dismissing appellant's petition herein should be in all things reversed.

Third. In that the circuit court of appeals did not decide that the said circuit court erred in dismissing appellant's petition and in refusing to to grant the prayer of said petition to enforce the orders of the Interstate Commerce Commission mentioned therein, and in not deciding that the findings of fact by the Interstate Commerce Commission that the $2 per car charge complained of was an unjust and unreasonable charge was supported by the evidence of the report and findings of said Commission and was made a prima facie case, and that the circuit court erred in not giving effect to the prima facie case thus made.

Fourth. In that the circuit court of appeals did not decide that the said circuit court erred in holding that there was a segregation of the aggregate charges for transportation of live stock to Chicago, and that the through rate to Chicago did not embrace the service to the Union Stock Yards at Chicago, because the said Commission found as a fact that the compensation for the service of transportation to the stock yards was embraced in the through rate and that the addition of the $2 terminal charge was an unreasonable exaction.

Fifth. In that the circuit court of appeals did not decide that the said circuit court erred in holding that the mere publication of the $2 charge

segregated the aggregate charges for transportation of live stock
368 to Chicago so that the through rate would only embrace the service up to the junction point of the defendants' railroads with the stock yards' tracks, and that the $2 was a special rate applied for the service from that point to the stock yards.

Sixth. In that the circuit court of appeals did not decide that the said circuit court erred in finding that "in 1893 the stock yards company assumed the entire work of hauling cars from the intersection of said stock-yard tracks with defendants' lines, respectively, to the yards, and charged the defendants thereafter on the basis of what it had cost defendants theretofore for the same service." Whereas the undisputed fact is, as found by the Commission, that the railroads have always handled the live stock with their own engines and crews over the stock yards' rails to the delivering chutes and returning the empty cars.

Seventh. In that the circuit court of appeals did not decide that the said circuit court erred in refusing to permit the petitioner to prove by the witness, Chappell, that the general managers of the railroads, including these defendants, entering the city of Chicago from the west entered into a combination in restraint of trade, and that the $2 terminal charge was made and promulgated by such combination, and that at the time such $2 charge was imposed it was in addition to the old rate, and that the old rate stood as it was previously.

Eighth. In that the circuit court of appeals did not decide that the said circuit court erred in refusing to permit the petitioner to introduce in evidence upon the trial of said cause the testimony and exhibits taken
before the Interstate Commerce Commission upon the original
369 hearing of the said cause of the Cattle Raisers' Association against the defendants below.

Ninth. In that the circuit court of appeals did not decide that the said circuit court erred in finding in its decree, in effect, that the $2 terminal charge in question in this suit was not unreasonable, unjust, or unlawful.

Tenth. In that the circuit court of appeals did not decide that the said circuit court erred in failing to find that the $2 terminal charge was made in addition to the through rates charged by defendants, and that the through rates covered the delivery of live stock to Chicago.

Eleventh. In that the circuit court of appeals did not decide that the said circuit court erred in finding that the said rates of the defendants on live stock were segregated by the imposing of said $2 charge.

Twelfth. In that the circuit court of appeals did not decide that the said circuit court erred in not granting a decree for plaintiff as prayed for, because the evidence showed that the terminal charge was a double charge for the same service, and was therefore unreasonable, unjust, and constituted an undue prejudice.

Thirteenth. In that the circuit court of appeals did not decide that the said circuit court having found that the Union Stock Yards constituted the depot of the defendants for the delivery of live stock, it follows as a legal conclusion that they were bound to deliver live stock to that depot without imposing the $2 terminal charge.

370 Fourteenth. In that the circuit court of appeals did not decide that the said circuit court erred in not entering a judgment and decree enforcing the orders of the Interstate Commerce Commission in

this cause, for the reason that it appears from the findings of fact of the Interstate Commerce Commission that the $2 terminal charge was imposed by a concerted agreement among the carriers entering Chicago, and was therefore an unlawful charge as being in violation of the anti-trust law of 1890.

Fifteenth. In that the circuit court of appeals did not decide that the said circuit court erred in failing to consider and give due weight to each and all of the findings of the Interstate Commerce Commission and in basing its judgment upon an erroneous assumed state of facts.

Sixteenth. In that the said circuit court of appeals erred in finding in in its decree, in effect, that the said $2 terminal charge in question in this suit was not unreasonable, unjust, or unlawful.

Seventeenth. In that the said circuit court of appeals erred in failing to consider and give due weight and prima facie effect to each and all of the findings of the Interstate Commerce Commission as set out in its report and findings of fact herein; and said circuit court of appeals erred in basing its judgment upon an erroneous and assumed state of facts.

Eighteenth. In that the said circuit court of appeals did not decide and hold, upon the finding of the Interstate Commerce Commission, that "June 1, 1894, these defendants [being competing carriers] by concerted agreement among themselves increased this [through] rate
371 $2 per car;" that said agreement of *of* defendants and the means by which that addition to the through rate was by them imposed upon the interstate traffic in question constituted a violation of the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and could not, therefore, be entertained as a defense in this case.

(Endorsed:) Filed Jul' 13, 1900. Edward M. Holloway, clerk.

372 United States circuit court of appeals for the seventh circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 371, inclusive, contain a true copy of the transcript of the record and the proceedings in the United States circuit court of appeals for the seventh circuit in the case of Interstate Commerce Commission vs. The Chicago, Burlington & Quincy Railroad Company, The Chicago Great Western Railway Company, The Chicago & North-Western Railway Company, The Chicago, Milwaukee & St. Paul Railway Company, The Chicago, Rock Island & Pacific Railway Company, The Atchison, Topeka and Santa Fe Railway Company, The Wabash Railroad Company, The Illinois Central Railroad Co., No. 665, October term, 1899, as the same remains upon the files and records of the United States circuit court of appeals for the seventh circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this seventeenth day of August, A. D. 1900.

[SEAL.] EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals
for the Seventh Circuit.

(Indorsement on cover:) File No. 17900. U. S. circuit court of appeals, seventh circuit. Term No. 415. The Interstate Commerce Commission, appellant, vs. The Chicago, Burlington and Quincy Railroad Company et al. Filed September 10, 1900.

O

No. 415.

Motion to advance.

Filed Mar. 1, 1901.

Supreme Court, U. S.
FILED
MAR 1 1901
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1900.

THE INTERSTATE COMMERCE COMMISSION, appellant,
v.
THE CHICAGO, BURLINGTON AND QUINCY Railroad Company et al., appellee.

No. 415.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1900.

THE INTERSTATE COMMERCE COMMISSION, appellant,
v.
THE CHICAGO, BURLINGTON AND QUINCY Railroad Company et al., appellee.
No. 415.

MOTION TO ADVANCE.

The Solicitor-General, at the request and on behalf of the appellant in the above-entitled cause, respectfully moves the court to advance the same on the docket for hearing at an early day during the next term, on the following grounds:

1. The case is a proceeding in equity under section 16 of the act to regulate commerce, for the enforcement of an order of the appellant, the Interstate Commerce Commission, against the appellees, and that section of the law provides that the courts "shall proceed to hear and determine" such cases speedily as courts of equity.

2. The appellant is a bureau or department of the Government, and the case presents questions of general public interest, and involves matter affecting the raisers of live stock in all of the territory lying between the Mississippi River and the Rocky Mountains, and the Canadian line and the Gulf of Mexico.

3. Among other things, the case involves the lawfulness of a $2 terminal charge imposed by the appellees, in addition to the through rate, upon each carload of live stock delivered at the Union Stock Yards in Chicago. The Interstate Commerce Commission, upon full hearings, had found the terminal rate to be unreasonable and unlawful, because the service for which it was nominally imposed was in part embraced in and covered by the through rate.

The number of persons directly interested herein is very large. As the appellees continue to impose and collect the charge denounced by the Commission the cattle raisers will be practically remediless respecting the terminal charge so collected even if this court shall ultimately sustain the conclusions reached by the Commission.

Notice of this motion has been served upon counsel for the appellees, and proof of service filed with the clerk.

JOHN K. RICHARDS,
Solicitor-General.

O

No. 154.

Office Supreme Court U.S.
FILED
JUL 9 1901
JAMES H. McKENNEY,
Clerk.

Br. of Cowan, Day, Willcox & Beck for Appellant

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 154.

Filed July 9, 1901.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,

against

THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY AND OTHERS.

Brief,

for the Appellant, The Interstate Commerce Commission.

S. H. COWAN,
W. A. DAY,
DAVID WILLCOX,
Of Counsel.

JAMES M. BECK,
Assistant Attorney-General.

C. G. Burgoyne, Walker and Centre Street, N. Y.

Supreme Court of the United States.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,

AGAINST

THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY and others.

October Term, 1901.
No. .

BRIEF,

for the appellant, The Interstate Commerce Commission.

STATEMENT.

On March 3, 1899, the Interstate Commerce Commission filed its petition in the Circuit Court of the United States for the Northern District of Illinois, to enforce an order by it against the appellees herein, originally made on January 20, 1898, and reaffirmed, after a rehearing on August 4, 1898. By this order the appellees were required to cease and desist from demanding, collecting and receiving, in addition to their regularly published transportation charges, the sum of $2 per carload of live stock as compensation for terminal services rendered in making delivery of live stock at the stockyards of the Union Stock Yards and Transit Company, in the City of Chicago—as the imposition of said rate had been found by the Commission to be unreasonable (Record, pp. 46–56).

Statement.

The petition (Record, pp. 1–56) set forth in detail that the proceedings before the Commission were instituted by a complaint of The Cattle Raisers' Association of Texas, filed on September 6, 1896 (Record, pp. 6–10); that The Chicago Live Stock Exchange, filed an intervening petition in support thereof on March 10, 1897 (Record, pp. 10–15); that answers were filed by the defendants; that the Commission duly made its findings of fact and conclusions of law and the order above mentioned (Record, p. 16–47); that upon a rehearing, the Commission made a supplementary report, findings and order (Record, pp. 47–56); that the defendants were duly served with said reports, findings and orders, and that they had refused to comply with the orders of the Commission. The defendants answered (Record, pp. 68–135) the petition of the Commission admitting that they had refused to obey said orders, but denying that they were lawful orders (Record, pp. 69, 78, 86, 96, 98, 103, 125, 128).

The cause came on for final hearing on November 6, 1899, before Hon. CHRISTIAN C. KOHLSAAT, District Judge, and judgment was rendered dismissing the petition (Record, p. 253). From the decree an appeal was taken to the Circuit Court of Appeals, where the decree of the Circuit Court was affirmed (Record, p. 270), principally upon the authority of Walker vs. Keenan, 73 Fed. Rep., 755 (Record, pp. 263–269; 103 Fed. Rep., 249). From this decree of the Circuit Court of Appeals the Interstate Commerce Commission has prosecuted this appeal (Record, p. 270).

The Commission treated the case as a question of fact, not law, and its findings of fact should be carefully noticed. Briefly they were as follows:

Previous to 1865 there were four depots for the delivery of live stock in Chicago, and railroads entering that city were obliged to make delivery at either one of these points, at the option of the shipper. This was expensive and inconvenient to the railroads, and the stock yards were established by the railroad companies for the purpose of providing a single point for delivery by all carriers.

By this action of the railroad companies the stock yards became the only live stock market in Chicago, and since 1865 all live stock intended for the Chicago market has necessarily been delivered at the stock yards, and must be so delivered now. The stock yards

became, in fact, the depot of all the roads for the delivery of live stock, and the expense of making delivery there was no greater than it would have been if the railroads had provided independent facilities. From 1865 until June 1, 1894, a shipment of live stock to Chicago under the published rate carried with it, as a matter, of course, a delivery at the stock yards.

On June 1, 1894, the Stock Yards Company, which had passed into other ownership, began to impose a charge upon the railroads for the use of its tracks in making such delivery, which amounted to $1 per car. Thereupon the railroad companies imposed upon the shipper an additional charge of $2 per car.

The Commission found that it was unreasonable for the railroad companies to impose a greater terminal charge upon the public than was exacted from them by the stock yards, for the reason that the present tariff already included the item of delivery. The Commission did not hold that the carriers might not legally segregate the rate and impose a terminal charge; it did not hold that a charge of $2 per car would be unreasonable for the performance of the service involved in a delivery at the stock yards, but it did hold that inasmuch as the rate already embraced that delivery it was unreasonable to make an additional charge for it. It further held that the imposition of this charge at Chicago worked an undue preference against that market.

That such is the substance of the findings of the Commission appears from the more detailed statement of those findings, which follows.

The evidence introduced by the appellant upon the trial consisted of certified copies of the proceedings before the Inter-State Commerce Commission and of its reports, findings and orders (Record, pp. 1–56; see 7 I. C. C. Reps., 513, 555*a*), and it was admitted by all the defendants that they had not complied with said orders, but had refused to do so (Record, p. 144). The findings of the Commission were as follows:

1. The Union Stock Yards and Transit Company was organized and chartered in 1865 for the purpose of constructing and establishing union stock yards at Chicago, together with trackage facilities to connect the different lines of railroad with the stock yards. The original capital was $1,000,000, all of which was paid in by the railway companies reaching Chicago, except $25,000. The capital

stock was subsequently increased to $13,000,000, and the mileage of the company's tracks, principally in the city of Chicago, now amounts to 240 miles. (Record, pp. 22, 23.)

2. Before the Union Stock Yards and its tracks were constructed, there were four different points in the city of Chicago at which live stock was delivered and marketed, and such deliveries were made by the railroad companies carrying live stock without any charge in addition to the regular through rate. On account of the burden of making this delivery and for the purpose of concentrating this business, the Union Stock Yards were constructed. Previous to June 1, 1894, the defendants had been accustomed to render the service of delivering cattle at the Stock Yards without exacting any charge in addition to the regular Chicago rate (pp. 19, 20). "At the present "time, the Union Stock Yards are the only live-stock market "in Chicago. Cattle shipped to Chicago for the purpose of being "sold upon the Chicago market must go to the stock yards, and "can only be got there by passing over the tracks of the (Stock "Yards) company in the same way that the various shipments in- "volved in this suit reach there. This fact was conceded by all "parties, and is perfectly well understood, both by the defendant "carriers and by the public" (Record, pp. 23, 34, 42, 43).

3. Until June 1, 1894, the railroads entering Chicago had the free use of the tracks and facilities of the Stock Yards Company for delivering live stock at Chicago, and the managers of the railroads remained on the board of directors of that company, although the stock of the railroad companies therein was disposed of between 1870 and 1878 (Record, (pp. 23, 24). On June 1, 1894, it was determined by the Stock Yards Company to impose a trackage charge of 40 cents per car each way in some cases and 75 cents per car in others, varying with the distance, on each car of live stock delivered by the several railroads at the Stock Yards, and this has since been paid by the several railroads reaching Chicago (Record, pp. 24, 31, 43). The railroads have since continued to use the tracks, moving live stock with their own engines and crews, in the same manner as they did before June 1, 1894 (Record, pp. 24, 25).

4. "Upon receiving notice of the purpose upon the part of the "Union Stock Yards and Transit Company to impose these trackage "charges, those of the defendants whose lines enter Chicago de- "termined to make a uniform charge of $2 per car for the delivery of

" all cars at the Stock Yards. In accordance with this determination " that rate was incorporated in the tariff to take effect June 1, 1894. " It is treated as a terminal or switching charge and is imposed in " addition to the regular Chicago through rate. It has been col- " lected since June 1, 1894, with the exception of a short time. " Only those defendants whose lines enter Chicago receive any part " of this charge, and they alone have to do with imposing and col- " lecting it " (Record, pp. 24, 34).

5. There was no change on June 1, 1894, from the pre-existing conditions of expense to the railroads for handling live stock into or out of the Stock Yards, except the trackage charge on live stock aforesaid. There has been no change since then, except that it is claimed that the railroads are able to handle live stock into the chutes at less expense by reason of certain improvements in transaction of the business by the Stock Yards Company (Record, pp. 42, 43).

6. " Some of the carriers profess to give the shipper the option of " sending his stock to Chicago or to the Stock Yards, and claim that " they do not deliver at the Stock Yards unless so directed. When " the stock is billed in Texas, the carrier inquires of the shipper " whether he desires that delivery be made at Chicago or at the " Stock Yards, and he is then informed that in case of delivery " at the Stock Yards this additional charge will be imposed. Other " carriers make no mention of this, relying upon the published tariff, " but inasmuch as the shipment is usually consigned to some com- " mission merchant whose place of business is at the Stock Yards, de- " livery is made there without further directions. If the option is " nominally given the shipper, it does not leave him any real choice. " If his stock is to be marketed at Chicago, it must go to the Stock " Yards, and can only go in this manner, as both he and the carrier " perfectly understand." (Record, pp. 24, 25.)

7. " Upon a survey of the whole situation, looking at these mat- " ters from the standpoint of both parties, what, in fairness to the " public and the railroads alike, ought to be done? This is " the thing for determination here. That the defendants may " charge one sum to Chicago and an additional sum for delivery at " the Union Stock Yards as a legal proposition, has been settled. " Whether they ought to make the charge they do, or any charge, or " whether the charge for delivery is already fairly included in the

" rate, is a proposition of fact for consideration. Under all the cir-
" cumstances, is this terminal charge a 'just and reasonable' one
" under the first section?" (Record, p. 41). Under these principles the Commission found that the charge was unreasonable (Record, pp. 43, 47).

8. On the rehearing, the Commission restated the whole matter of reasonableness of the rate as follows ((Record, pp. 49, 50): "To remove all doubt upon that subject, how-
" ever, if it is not clearly found, we now find that, looking
" entirely to the cost of service, and including as a part of
" that cost the trackage charge paid the Union Stock Yards and
" Transit Company and the unloading charge paid that same com-
" pany, the amount of this terminal, if under the circumstances of
" this case it is proper to impose the charge, is reasonable. If any
" modification of the present findings is necessary, they are hereby
" modified to that extent.

" That finding must, however, be carefully read in connection
" with the other facts in the case and the conclusion of the Com-
" mission that the imposition of this terminal charge is unreason-
" able. The defendants say it was admitted that this charge was
" reasonable, " provided any charge could be legally made for the ter-
" 'minal service." The intimation of the Commission was, as indi-
" cated in the above extract from the record, " that if this charge was
" ' proper to be imposed, it was a reasonable charge." The reason for
" the conclusion of the Commission is to be found in the distinction
" between these two statements. What the Commission passed upon
" finally was, not whether a terminal charge of this sort could be
" legally made—that had been already determined by the courts—but
" whether this particular charge could be properly imposed under the
" circumstances of this case. To avoid misapprehension we will
" restate here the grounds for our decision, and for that purpose we
" confine attention to this rate as it existed on May 31 and on June
" 1, 1894.

" May 31st there was in effect a certain rate on live stock from
" various points to Chicago, and that rate, upon the record in this
" case, must be taken to be a just and reasonable one. The defend-
" ants intimate in their answers that this rate has been forced down
" until it was too low, and something was said in the proof looking in
" the same direction. Upon the other hand, the complainants started

" in to prove that the rate at that time was too high, but, as is found " by the case, both these claims were virtually abandoned. There is " nothing in the record before us to show that the rate was other than " a right one, and we assume that May 31st the rate in effect was " just and reasonable.

" Now, just what did this live-stock rate to Chicago include? " The defendants insisted upon the reargument of this case that it " covered the transportation of that live stock to the point where, on " its way to the Union Stock Yards, it left the tracks of these several " defendants and nothing more. The complainants insisted that that " rate covered a delivery of the stock at the Stock Yards. We are " unable to see any ground whatever for the contention of the de- " fendants. As a matter of law, the undertaking to transport live " stock from one place to another includes a delivery of the stock. " Originally live stock brought to Chicago by these defendants upon " the Chicago rate must be delivered at any one of four different " points. This was necessitated by the actual competitive conditions " at that market.

" The railway companies, for the purpose of avoiding the ex- " pense and inconvenience of this kind of delivery, created the " present Stock Yards. It was entirely at their suggestion and " entirely for their benefit at the outset. From the time the Stock " Yards were constructed down to June 1, 1894, the various de- " fendants had, by arrangement with the Stock Yards Company, " the right to use the tracks of that company for the delivery of " this stock at the Stock Yards. By the action of the various " carriers that became the only place in Chicago at which live " stock could ordinarily be delivered. Whenever a carload of live " stock was shipped to Chicago, in the absence of special direc- " tions, it was taken to the Stock Yards. This was under- " stood both by the carrier and by the shipper. No defendant had " any facilities, previous to June 1, for delivering live stock in any " quantity at any other point than at the Stock Yards.

" Now, in view of the legal liability resting upon the carrier to " make a delivery somewhere, in view of the fact that this delivery " must be made at the Stock Yards and was habitually made there, " it seems impossible that the defendants in making this rate from " the point of shipment to Chicago did not include in that rate " and contemplate as a part of the service covered by that rate a

" delivery at the Stock Yards. It is absurd to say that the " Chicago rate paid for the transportation of that stock up to some " switch in the field, or in the city, where there was no facility for " a delivery, and that the transportation beyond that point was a " gratuity. We think and find that the Chicago rate on May 31, " 1894, included, as it had included for the last thirty years, a de- " livery and unloading of the stock at the Stock Yards, and that " rate, upon the record in this case, was a just and reasonable one.

" June 1, 1894, these defendants, by concerted agreement among " themselves, increased this rate $2 per car. If the rate on May " 31st was a just and reasonable one, the rate on June 1, was an un- " just and unreasonable one, unless some new condition justified the " imposition of that additional charge. We have found that to " the extent of $1 a new condition did justify the additional charge, " for the reason that then, for the first time, the Stock Yards Com- " pany exacted this trackage charge. In other words, the cost of " service to the defendants was increased by just $1 on that day. " It must follow, therefore, as a necessary conclusion, that of the " increase which the defendants made $1 was justifiable and $1 " was unjustifiable. This is not, however, because $2 is an unrea- " sonable charge for transporting a car to the stock yards, if that " service was performed by some independent agency, but because, " since the defendants were already receiving compensation for this " service, they ought not to charge for it a second time. Of this " proposition we have no doubt. Upon the assumption that the " rate May 31st was a just one, we regard the imposition of any- " thing above what the defendants were then compelled for the " first time to pay as an unwarranted exaction and a violation of " the first section of the act to regulate commerce, if it is possible " to violate that section " (Record, pp. 50, 51).

" The Commission assumes that, as a legal proposition, the " carrier may make a charge of the sort which it attempts to make " in this case, but it holds as a matter of fact, that it is unreasonable " to impose this terminal charge for the reason that the rate to " Chicago already includes that charge. The Circuit Court of " Appeals says that the carrier may segregate its rate, charging one " part to a certain point and another part beyond that point ; but " there is a wide difference between segregation and addition. " What the carriers have done here is to add an arbitrary sum for a

"service for which they are already receiving a reasonable compensation" (Record, p. 51).

"When, under the circumstances of this case, these defendants "through a long series of years charged a given rate for the receiving, transporting and delivering of live stock at the Union Stock "Yards, it must be held that this rate covered the entire undertaking, "and as a part of that undertaking that it yielded to the defendants "a fair compensation for transporting to the Stock Yards and there "unloading. And while the defendants may, if they choose, divide "this rate, they cannot arbitrarily increase the rate by adding a "terminal charge of the character indicated" (Record, p. 52).

"The defendants contend that the terminal charge is a reasonable one, and that if any part of the rate is wrong it is the "charge for transportation from the point of origin to the point in "Chicago where the cars leave their tracks. Abstractly this may "be true, but in dealing with these transportation problems the "purpose is to reach practical justice. The Chicago rate is so "much per hundred pounds, and would vary with the number of "pounds contained in each car. This terminal charge is a definite "amount per car. It would, therefore, be impossible to exactly "offset the terminal charge by any corresponding reduction in the "rate per hundred pounds. The terminal carrier at Chicago, as "the case shows, receives and retains the entire amount of this "terminal charge. Assuming, therefore, that this company was "already compensated for this service, it now receives and retains "just $1 too much per car. The only method by which absolute "justice can be done is to compel the carrier to desist from exacting this sum. Surely the fact that the railroad company is "already receiving pay for this service is good ground for holding "that a second charge is unreasonable" (Record, pp. 52, 53).

"It is also said that since the imposition of this terminal charge "the Chicago rate has been reduced, so that the total amount "to-day, including the terminal charge, is much less than it was in "1894, when the charge was imposed. The case finds that such a "reduction was made about October 1, 1896. That reduction did "not, however, apply to all the territory to which the terminal "charge applies, but only to certain limited portions of that territory, and the purpose of it was to equalize the rate from those "sections as compared with other sections. There is no claim

" that this reduction was made on account of the imposition of the " terminal charge, or that it would not have been made had no " terminal charge been imposed, nor that if the Chicago rate, June " 1, 1894, ought to have carried with it a delivery at the stock yards " the present rate should not likewise do so " (Record, p. 53).

9. On the rehearing, the Commission also found as follows in reference to the matter of undue prejudice as against Chicago (Record, pp. 54, 55); " for many years previous to June 1, 1894, the " defendants had maintained a certain fixed relation in rates " between these different cattle markets. On June 1, they " increased the expense of placing cattle upon the Chicago " market by just $2 per car. If the relative rates were " right before, and we may fairly presume, in the absence " of any claim to the contrary, that they were, this " charge disturbed those rates to that extent. If the increase in " the Chicago rate was justifiable, no undue prejudice would be " worked against Chicago. We have found that, to the extent of " $1.00 per car, it was unjustifiable. It results, therefore, that the " defendants have disturbed the just relation of rates between these " different centres by imposing without reason or justification an " additional charge upon the rate to Chicago. There being no " excuse for the imposition of this additional charge, we think it " necessarily follows that an undue prejudice against the market of " Chicago is thereby created. It is the want of justification which " makes the preference undue. In this connection it should be " observed that it is immaterial whether the Chicago rate is in- " creased by raising the entire rate or by imposing the terminal " charge. The expense of marketing live stock at Chicago is unjus- " tifiably made $1 per car greater in the case of that market, and to " that extent arises an undue preference."

The finding of the Commission was, therefore, briefly, that upon June 1, 1894, the Chicago rate covered the service of delivery at the Stock Yards; that there was no addition to the expense of the service save the $1 exacted by the Stock Yards Company after that date, and that the addition of a terminal charge of $2 was, therefore, unreasonable and an undue preference as against Chicago.

As already said (*supra*, 2), the defendants conceded that they had refused to obey the orders of the Commission. The only

evidence (Record, pp. 157–236) which they introduced upon the trial was the circulars which they had issued establishing, upon June 1, 1894, the $2 terminal charge in question.

The circulars were substantially the same as to each of the defendants (Record, pp. 184–192, 196–234). They were based upon a joint circular of the Western Freight Association, to which all the defendants belonged (Record, pp. 185, 242, 243), describing the charge as a terminal "charge *in addition* to the existing Chicago "rates" (pp. 244, 246). The circular of the Northwestern Company gave notice that after June 1, 1894, the tariffs on live stock "will, "*in addition* to the rates named to or from Chicago, be subject to a "terminal charge of $2.00 per car. This charge must in all cases be "*added* to the through rate and must be shown separately on the "way bill" (Record, p. 196). The circular of the Atchison Company (Record, pp. 185, 198) gave notice that after June 1, 1894, "tariffs on live stock and all other traffic received from or delivered "to the stock yards or industries located on the track of the Union "Stock Yards Railway, the Indiana State Line Railway and "Northern Indiana Railroad will, *in addition* to the rates named to "or from Chicago, be subject to a terminal charge of $2 per car," and that this amends all tariffs of the company. The other circulars are similar in their terms. These circulars, therefore, have no effect beyond showing that the charge was imposed; they are without force upon the question of its reasonableness (*infra* pp. 26, 27.

> The appellees in their brief below (p. 5), made the statement that these circulars provided that "the Chicago rate "should apply only on shipments of live stock not going to "the Stock Yards, but deliverable elsewhere in Chicago on "appellees' own lines of road, and that an additional charge "of $2 per car beyond the flat rate would be made on live "stock delivered at the Union Stock Yards." These circulars are spoken of as effecting a limitation of the Chicago rate to the defendants' own lines (p. 15); "the established tariffs "of the carrier explicitly separate the terminal service from "the preceding transportation service, and make separate "charges for the two different services" (p. 37). This is a figment of the imagination. The circulars contain nothing regarding any modification of the Chicago rate, but by their express terms merely *add* the terminal charge to the *existing* through rate.

The fact that two years after this charge was imposed and after proceedings were begun to test its legality, the Atchison Company issued a circular by which it set up a distinction regarding the delivery of live stock between a point in Chicago on its own line known as Corwith, and the Stock Yards, also in Chicago (Record, pp. 198, 199) does not aid the defendants. None of the other defendants made any such effort at any time, and the Atchison Company evidently had no such idea when the so-called terminal charge was imposed for it gave no such notice at that time. In any case, the matter is controlled by the finding of the Commission that the Stock Yards are really the depot of all the companies for the delivery of live stock.

In answer to a question by the court counsel said (Record, p. 234), " on the question of the division of the rates, we have no " other testimony to offer than the tariff sheets which we have " already offered." It will be seen, therefore, that the defendants introduced absolutely no defensive testimony. They contented themselves with affirmatively proving the imposition of the terminal charge which the Commission had already found unreasonable and undue and to prevent the continuance of which the present suit was brought.

Under this proof it is manifest that the Circuit Court erred in disregarding the finding of the Commission that the charge was unreasonable and an undue preference.

Assignment of Errors.

An assignment of errors in proper form is contained in the record (pp. 271–273). It sets forth that the circuit court of appeals erred in the following respects:

1. In that the said circuit court of appeals ordered that the decree of the circuit court of the United States for the northern district of Illinois, entered on the day of , 1899, wherein it was adjudged that the petition of appellant herein be dismissed, should be in all things affirmed.

2. In that the said circuit court of appeals did not order and adjudge that the decree of the circuit court of the United States for the northern district of Illinois dismissing appellant's petition herein should be in all things reversed.

3. In that the circuit court of appeals did not decide that the said circuit court erred in dimissing appellant's petition and in refusing to grant the prayer of said petition to enforce the orders of the Interstate Commerce Commission mentioned therein, and in not deciding that the findings of fact by the Interstate Commerce Commission that the $2 per car charge complained of was an unjust and unreasonable charge was supported by the evidence of the report and findings of said Commission and was made a *prima facie* case, and that the circuit court erred in not giving effect to the *prima facie* case thus made.

4. In that the circuit court of appeals did not decide that the said circuit court erred in holding that there was a segregation of the aggregate charges for transportation of live stock to Chicago, and that the through rate to Chicago did not embrace the service to the Union Stock Yards at Chicago, because the said Commission found as a fact that the compensation for the service of transportation to the stock yards was embraced in the through rate, and that the addition of the $2 terminal charge was an unreasonable exaction.

5. In that the circuit court of appeals did not decide that the said circuit court erred in holding that the mere publication of the $2 charge segregated the aggregate charges for transportation of live stock to Chicago so that the through rate would only embrace the service up to the junction point of the defendants' railroads with the stock yards' tracks, and that the $2 was a special rate applied for the service from that point to the stock yards.

6. In that the circuit court of appeals did not decide that the said circuit court erred in finding that " in 1893 the stock yards company assumed the entire work of hauling cars from the intersection of said stock yard tracks with defendants' lines, respectively, to the yards, and charged the defendants thereafter on the basis of what it had cost defendants theretofore for the same service." Whereas, the undisputed fact is, as found by the Commission, that the railroads have always handled the live stock with their own engines and crews over the stock yards' rails to the delivering chutes, and returning the empty cars.

7. In that the circuit court of appeals did not decide that the said circuit court erred in refusing to permit the petitioner to prove by the witness Chappell that the general managers of the railroads, including these defendants, entering the city of Chicago

from the west, entered into a combination in restraint of trade, and that the $2 terminal charge was made and promulgated by such combination, and that at the time such $2 charge was imposed it was in addition to the old rate, and that the old rate stood as it was previously.

8. In that the circuit court of appeals did not decide that the said circuit court erred in refusing to permit the petitioner to introduce in evidence upon the trial of said cause the testimony and exhibits taken before the Interstate Commerce Commission upon the original hearing of the said cause of the Cattle Raisers' Association against the defendants below.

9. In that the circuit court of appeals did not decide that the said circuit court erred in finding in its decree, in effect, that the $2 terminal charge in question in this suit was not unreasonable, unjust or unlawful.

10. In that the circuit court of appeals did not decide that the said circuit court erred in failing to find that the $2 terminal charge was made in addition to the through rates charged by defendants, and that the through rates covered the delivery of live stock to Chicago.

11. In that the circuit court of appeals did not decide that the said circuit court erred in finding that the said rates of the defendants on live stock were segregated by the imposing of said $2 charge.

12. In that the circuit court of appeals did not decide that the said circuit court erred in not granting a decree for plaintiff as prayed for, because the evidence showed that the terminal charge was a double charge for the same service, and was, therefore, unreasonable, unjust, and constituted an undue prejudice.

13. In that the circuit court of appeals did not decide that the said circuit court having found that the Union Stock Yards constituted the depot of the defendants for the delivery of live stock, it follows, as a legal conclusion that they were bound to deliver live stock to that depot without imposing the $2 terminal charge.

14. In that the circuit court of appeals did not decide that the said circuit court erred in not entering a judgment and decree enforcing the orders of the Interstate Commerce Commission in this cause, for the reason that it appears from the findings of

fact of the Interstate Commerce Commission that the $2 terminal charge was imposed by a concerted agreement among the carriers entering Chicago, and was therefore an unlawful charge, as being in violation of the anti-trust law of 1890.

15. In that the circuit court of appeals did not decide that the said circuit court erred in failing to consider and give due weight to each and all of the findings of the Interstate Commerce Commission, and in basing its judgment upon an erroneous assumed state of facts.

16. In that the said circuit court of appeals erred in finding in its decree, in effect, that the said $2 terminal charge in question in this suit was not unreasonable, unjust or unlawful.

17. In that the said circuit court of appeals erred in failing to consider and give due weight and *prima facie* effect to each and all of the findings of the Interstate Commerce Commission as set out in its report and findings of fact herein, and said circuit court of appeals erred in basing its judgment upon an erroneous and assumed state of facts.

18. In that the said circuit court of appeals did not decide and hold, upon the finding of the Interstate Commerce Commission, that "June 1, 1894, these defendants (being competing carriers) by concerted agreement among themselves increased this (through) rate $2 per car;" that said agreement of defendants and the means by which that addition to the through rate was by them imposed upon the interstate traffic in question constituted a violation of the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and could not, therefore, be entertained as a defense in this case.

Grounds of Appellant's Argument.

The Interstate Commerce Commission held that the imposition of the so-called terminal charge was unjust and unreasonable and that it constituted an undue and unreasonable preference to other markets as compared with Chicago (Record, pp. 47, 55). These findings of fact brought the case within the prohibitions of both the first and the third sections of the interstate commerce act. It was,

therefore, within the scope of the Commission's powers to make this order directing the defendants to cease and desist from the charge. The refusal of the circuit court to enforce this order was unwarranted by law. This was so for the following reasons:

First. The Commission found that the imposition of the terminal charge was unjust and unreasonable, and constituted an undue prejudice to Chicago (pp. 16–22).

1. This was a question of fact committed by statute to the decision of the Commission (pp. 16, 17).

2. Even if, upon this record, the question were open, there could be no doubt of the soundness of the finding (pp. 17–22).

Second. There was nothing before the Circuit Court warranting it in disregarding the decision of the Commission (pp. 23–33).

1. The finding of the Commission was *prima facie* binding upon the Circuit Court (23–26).

2. There was no proof contrary to that finding (p. 26, 27).

3. The decision of the Circuit Court was based upon assumptions wholly unsupported by evidence (pp. 27–29).

4. The case of Walker vs. Keenan, 73 Fed. Rep., 755, is not controlling here (pp. 29–33).

The decree of the Circuit Court was, therefore, erroneous.

FIRST.

THE COMMISSION FOUND THAT THE IMPOSITION OF THE TERMINAL CHARGE WAS UNJUST AND UNREASONABLE, AND CONSTITUTED AN UNDUE PREJUDICE TO CHICAGO.

I. This was a question of fact committed by statute to the decision of the Commission.

The first section of the act to regulate commerce declares unjust and unreasonable charges to be unlawful, and prohibits the same, and the third section prohibits undue and unreasonable preferences as between localities. In neither case does the act specify what constitutes an unreasonable charge, or an undue preference. The twelfth section of the act empowers the Commission to execute and enforce the provisions of the act, and for that purpose to investigate the facts. The fifteenth section provides "that if, in any case "in which an investigation shall be made by said Commission, it "shall be made to appear to the satisfaction of the Commission, "either by the testimony of witnesses or other evidence, that any- "thing has been done, or omitted to be done, in violation of the "provisions of this act, * * it shall be the duty of the Com- "mission to forthwith cause a copy of its report in respect thereto "to be delivered to such common carrier, together with a notice to "said common carrier to cease and desist from such violation, "within a reasonable time to be specified by the Commission."

These provisions of the act do not attempt to define unjust charges or unreasonable preferences, but give the Commission power to enforce the provisions of the act against such charges or preferences, and to require the carrier to cease and desist therefrom. They, therefore, necessarily give to the Commission power to determine and find whether there is an unjust charge or an undue preference. Indeed, the Commission was established mainly in aid of rights of shippers already existing at common law, for the purpose of affording a convenient method of ascertaining whether those rights had been violated. Accordingly, it is settled by authority that the question whether there is an unjust and unreasonable charge or an undue and unreasonable preference, is a question of fact to be determined by

First. The Commission found that the so-called terminal charge was unreasonable and undue.

II. If the question were open, there could be no doubt of the soundness of the finding.

the Commission in view of the circumstances of each case (Cincinnati, N. O. and Texas Pacific Co. vs. Interstate Commerce Commission, 162 U. S., 184, 196, Texas and Pacific Railway Co. vs. Commission, 162 U. S., 197, 219, 238; Interstate Commerce Commission vs. Alabama Midland Co., 168 U. S. 144, 170, 175; Louisville Co. vs. Behlmer, 175 U. S., 648, 675; Matthews vs. Board, 106 Fed., 7). Inasmuch as the testimony before the Commission was excluded upon defendants' objection (Record, pp. 250, 251), it is idle to argue that its findings were unsupported by testimony. Those findings were by the statute *prima facie* evidence of the facts which they stated, and could be rebutted only by evidence and not by argument.

There is nothing in the suggestion that the orders were unlawful as establishing a rate (Appellees' Brief below, pp. 21–28; Interstate Commerce Commission vs. Alabama Co., 168 U. S., 144, 161, 162). As just said, the Commission is expressly, authorized by section fifteen of the act to prohibit violation of any provisions of the act including exacting unreasonable rates and the exercise of such a power does not constitute making a rate. This is settled by Reagan vs. Trust Co., 154 U. S., 362; Smyth vs. Ames, 169 U. S., 466; 171 U. S., 361, and the similar cases which hold that while a court, as well as the Commission, has no power to make rates, it has full power to decide whether those made by the carrier are reasonable. So, too, the power of the Commission to pass upon the question of reasonableness of rates is fully affirmed in Interstate Commerce Commission vs. Alabama Midland Co. (168 U. S., 144, 173). This is precisely what the Commission did here. It decided that the imposition of the so-called terminal charge was unreasonable; it made no order regarding the figure to which the rate should be reduced, but merely stated its views as to the extent of the overcharge for the information of the carriers (Record, pp. 44, 47).

II. Even if upon this record the question were open, there could be no doubt of the soundness of the finding.

Even aside from this finding of the ultimate fact by the Commission, there can be no doubt upon the subject. Common carriers

engaged in the business of transporting live stock are bound to furnish facilities for unloading the same at the point of destination—they cannot charge the shipper what it may cost the carrier to procure the performance of that service even by an independent agent.

In Covington Stock Yards Co. vs. Keith, 139 U. S., 128, the court said, " the contention just adverted to is, in effect, " that the carrier may, without a special contract for that " purpose, require the shipper or consignee, in addition to " the customary and legitimate charges for transportation, to " compensate it for supplying the means and facilities that " must be provided by it in order to meet its obligations to " to the public. To this proposition we cannot give our " assent.

" When animals are offered to a carrier of live stock to " be transported it is its duty to receive them; and that " duty cannot be efficiently discharged, at least in a town or " city, without the aid of yards in which the stock offered " for shipment can be received and handled with safety and " without inconvenience to the public while being loaded " upon the cars in which they are to be transported. So, " when live stock reach the place to which they are con- " signed, it is the duty of the carrier to deliver them to the " consignee; and such delivery cannot be safely or effect- " ively made, except in or through inclosed yards or lots, con- " venient to the place of unloading. In other words, the duty " to receive, transport and deliver live stock will not be fully " discharged, unless the carrier makes such provision, at the " place of loading, as will enable it to properly receive and " load the stock, and such provision, at the place of unload- " ing, as will enable it to properly deliver the stock to the " consignee " (p. 134).

In Walker vs. Keenan, 73 Fed. Rep., 755, 759, the court said, " as incidental to its business of transporting or hauling " cattle, a railroad company must provide the means of load- " ing, unloading and caring for such freight pending its " delivery to the consignee "(p. 759).

In the present case, therefore, it was the duty of the defendants to furnish such facilities, and they discharged that duty by means of the Stock Yards. They had no terminal facilities of their own for delivering live stock at Chicago; for thirty years prior to June 1, 1894, such deliveries were uniformly made at the Stock

First. The Commission found that the so-called terminal charge was unreasonable and undue.

II. If the question were open, there could be no doubt of the soundness of the finding.

Yards ; during all that time the rates for transporting live stock to Chicago included their delivery at the Stock Yards ; that rate was a reasonable rate for the service. These facts were found by the Commission and were not contradicted by any evidence at the trial. They were conceded by Defendants' Brief below (pp. 32-35).

Upon June 1, 1894, the Stock Yards Company imposed a charge for the use of their terminal facilities amounting to an average of $1 per car. With that exception, precisely the same conditions prevailed after that date as before it. As the through rate embraced the service of delivery at the Stock Yards before that time, it equally embraced that service thereafter, and so the Commission has necessarily found (Record, p. 50).

Thereupon, the defendants issued the circulars, which constitute their only evidence.

Notwithstanding a suggestion by the court (Record, p. 183), the defendants made no effort to explain these circulars (Record, p. 235). Indeed, as their terms were plain, probably nothing of the sort would have been competent.

Furthermore, the defendants made no effort to show that there was any division or segregation of the existing rate. In answer to a question by the court, their counsel said " on " the question of the division of the rates we have no other " testimony to offer than the tariff sheets which we have " already offered " (Record, p. 234). When the Commission sought to prove that the Chicago rates remained the same after the terminal charge was imposed as they had been before that time, the testimony was ruled out upon the objection of the defendants (Record, p. 157). In their brief below the appellees devoted eight pages (pp. 38-46) to an argument that it was competent for the court to receive testimony in addition to the findings of the Commission. Inasmuch as the general rule is unquestionable (Interstate Commerce Commission vs. Alabama Co., 168 U. S., 144, 174, 175), and the defendants offered no such testimony but objected to whatever the appellants offered, this seems a waste of time. It rather emphasizes the rule that the Commission's findings must be deemed controlling ; it was open to the defendants to rebut those findings, but they did not see fit to do so.

These circulars merely gave notice that live stock delivered at the Stock Yards would " *in addition to the rates named to or from Chi-*

First. The Commission found that the so-called terminal charge was unreasonable and undue.

II. If the question were open, there could be no doubt of the soundness of the finding.

"*cago*, be subject to a terminal charge of $2 per car" (Record, p. 198). They showed nothing save an addition to the rate. They did not purport to diminish or limit the service which had always been rendered for the through rate, or to subdivide or "segregate" the same, but merely made "an addition" to that rate.

The appellees' case depends upon the claim that these circulars effected a modification, or "segregation," as they are fond of saying, in the through Chicago rate previously existing. It has been already pointed out that their brief contained a number of unfounded statements regarding these circulars (*supra*, p. 10). Its efforts to dodge the question of the reasonableness of what was done are illustrated, too, by the fact that it argues at length (Brief, pp. 30–35) that what was done was really to modify the through Chicago rate, and then that the Chicago rate is not now before the court (Brief, pp. 47–49).

The argument is that while the terms of the circulars merely made an addition to the Chicago rate as a so-called terminal charge, in point of fact they raised all the Chicago rates and subdivided them into a through charge to the end of the lines of each carrier, and a terminal charge from that point to the stock yards. But this is merely imagination. The legal effect of the circulars must be judged by their plain terms. They did not purport to modify the through rate. Moreover such a modification could be made only by publishing the same in the manner provided by the interstate commerce act (Sec. 6). So, too, the parties interested in the through rate were not the same as those interested in the terminal charge, inasmuch as the latter enured only to the roads entering Chicago, and, therefore, it cannot be claimed that the through rates were raised without any action whatever by many of the carriers who were parties to them.

As the through rate prior to June 1, 1894, covered delivery at the Stock Yards, it equally covered that service thereafter. The circulars merely added $2 to the rate, without any addition whatever to the service rendered. As the previous rate was presumptively reasonable, and nothing occurred warranting its increase save the imposition of a $1 charge by the Stock Yards Company, the $2 addition by the defendants was unreasonable. This seems too plain for argument.

First. The Commission found that the so-called terminal charge was unreasonable and undue.

II. If the question were open, there could be no doubt of the soundness of the finding.

In any case this additional terminal charge was unlawful, because it was imposed by concerted agreement among the defendants in violation of the anti-trust law. Prior to June 1, 1894, the Chicago rate covered the cost of delivery at the Stock Yards. Upon that date the Stock Yards Company imposed a trackage charge which varied from 80 cents per car for the shortest lines to $1.50 per car for the longest lines. The defendants were competing carriers for the traffic. Thereupon, in order to secure a uniform rate, the defendants, by concerted agreement among themselves, increased the rate by adding a uniform terminal charge of $2 per car. Otherwise, the shorter lines would have secured the business at the lower rate made to them by the Stock Yards Company, and to the exclusion of the longer lines. Such action comes within the definition of an illegal combination (Pettibone vs. U. S., 148 U. S., 197; U. S. vs. Goldberg, 7 Biss., 175, 25 Fed. Cas., 175; U. S. vs. Babcock, 3 Dill., 581, 24 Fed. Cas., 913).

These facts were found by the Commission (Record, pp. 25, 38, 43, 50), and were not disputed at the final hearing. Moreover, after the defendants had introduced in evidence their circulars establishing the additional $2 charge, the complainant called a witness to prove the details of the combination which led to that addition to the rate; this testimony was excluded on the defendants' objection (Record, pp. 250, 251), and this ruling is assigned as error (*supra*, p. 12). Still further, the testimony of defendants' witness Courtright (Record, p. 242), affirmatively shows that the general managers of the defendants put this additional charge into effect through a joint agency known as the Western Freight Association, of which all the defendants were members (Record, pp. 185, 242); which published all joint and through tariffs (Record, p. 243), and which effected the increase by its "Joint Circular No. 62" (Record, p. 244), and the Atchison circular which was issued somewhat subsequently purported on its face to be a "reissue of Western Freight Association Joint "Circular No. 62" (Record, pp. 197, 198).

Without this combination the public would have had the advantage of the least expensive route. A majority of the defendants were required to pay only the 80-cents trackage charge; and, if competition had prevailed, no greater increase could have lawfully been

First. The Commission found that the so-called terminal charge was unreasonable and undue.

II. If the question were open, there could be no doubt as to the soundness of the finding.

made. But the defendants agreed that the rates by all the lines must be equal, so that they might all participate in this competitive traffic (Record, p. 249). As the additional expense would be 80 cents by the shorter and $1.50 by the longer routes, they agreed, somewhat illogically, to add $2 per car in all cases.

It should be observed, too, that this so-called terminal charge was imposed only upon cattle coming from the West, and not upon cattle coming from the East. For example, the Wabash Company imposed a terminal charge of $2 upon all cattle coming from the West and $1 upon all cattle coming from the East. In other words, the Eastern lines did not combine, while the Western lines did do so (Record, pp. 30, 38). The Wabash Company, therefore, was enabled by the combination to impose a charge 100 per cent greater upon Western cattle than upon Eastern cattle. This strongly illustrates the effect of the combination.

The charge imposed as the result of this combination in restraint of commerce between the states constitutes the defense of the appellees It is obvious that a charge thus fixed cannot be enforced by the courts. The agreement was in itself illegal (U. S. vs. Trans-Missouri Association, 166 U. S., 290, 339; U. S. vs. Joint Traffic Association, 171 U. S., 505), and "the rule of law is of "universal application that none shall, by the aid of a court of "justice, obtain the fruits of an unlawful bargain" (Russell vs. DeGrand, 15 Mass., 35, 37, cited with approval in Gibbs vs. Consolidated Gas Co., *infra*). This is met by the appellees with the suggestion that the Commission has no power to administer the anti-trust law (Sprigg vs. Baltimore & Ohio Co., 8 Interstate Commerce Reps., 443). But this is quite without force. The Commission made no effort to do so in the present case, but found the so-called terminal charge to be unreasonable on the facts and brought the present action to enforce its order. Thereupon the defendants set up that the "addition" to the rates effected by the circulars was lawful—that is their only defense. But the proof shows that it was the result of an unlawful combination having as its sole purpose the suppression of competition. Surely it is idle to claim that a court of equity cannot give attention to such facts but must carry the combination into effect.

First. The Commission found that the so-called terminal charge was unreasonable and undue.

II. If the question were open, there would be no doubt as to the soundness of the finding.

In Gibbs vs. Consolidated Gas Company (130 U. S., 396), it appeared in evidence on the trial, although the point was not raised by the pleadings, that the service for which compensation was sought by the plaintiff was rendered in obtaining for the defendant a contract to restrain competition in the price of gas to be furnished to the public. The court said (p. 410), "innumerable cases, however, might be cited "to sustain the proposition that combinations among those "engaged in business impressed with a public or *quasi* public "character which are manifestly prejudicial to the public "interest cannot be upheld. The law 'cannot recognize as "'valid any undertaking to do what fundamental doctrine "'or legal rule directly forbids. Nor can it give effect to "'any agreement the making whereof was an act violating "'law.'"

In East Tennessee, Virginia and Georgia Railway vs. Interstate Commerce Commission, 99 Fed. Rep., 52, the United States circuit court of appeals for the sixth circuit refused to give effect to rates which were reached by agreement between competing lines. It said, "the interstate com-"merce law, it is conceded, was intended to encourage "normal competition. It forbids pooling for the very pur-"pose of allowing competition to have effect. But it is not "in accord with its spirit or letter to recognize, as a condi-"tion justifying discrimination against one locality, competi-"tion at a more distant locality when competition at the "nearer point is stifled or reduced, not by normal restric-"tions, but by agreement between those who otherwise would "be competing carriers. The difference in conditions thus "produced is effected by a restraint upon trade and com-"merce, which is not only violative of the common law, but "of the so-called Federal anti-trust act." There is nothing in the subsequent opinion of this court in the case which modifies these rules (181 U. S., 1, 25).

There can be no question, therefore, as to the Commission's decision that the terminal charge was unjust and unreasonable and constituted an undue and unreasonable prejudice to Chicago.

SECOND.

THERE WAS NOTHING BEFORE THE CIRCUIT COURT WARRANTING IT IN DISREGARDING THE DECISION OF THE COMMISSION.

I. The finding of the Commission was prima facie binding upon the Circuit Court.

By section fourteen, of the interstate commerce act, it is provided that the findings of the Commission shall "in all judicial proceedings, be deemed *prima facie* evidence as to *each* and *every* fact "found;" and by section sixteen of the act, it is provided that on hearings such as the present "the findings of fact in the report of "the said commission shall be *prima facie* evidence of the matters "therein stated." The meaning of the expression *prima facie* evidence is general and its force in this statute is settled by authority.

In Kelly vs. Jackson (6 Peters, 622, p. 632) the court said, "what is *prima facie* evidence of a fact? It is such "as, in judgment of law, is sufficient to establish the fact; "and, if not rebutted, remains sufficient for the purpose. "The jury are bound to consider it in that light, unless they "are invested with authority to disregard the rules of evi"dence, by which the liberty and estate of every citizen are "guarded and supported. No judge would hesitate to set "aside their verdict and grant a new trial if, under such cir"cumstances, without any rebutting evidence, they disregard "it. It would be error on their part, which would require "the remedial interposition of the court. In a legal sense, "then, such *prima facie* evidence, in the absence of all con"trolling evidence or discrediting circumstances, becomes "conclusive of the fact; that is, it should operate upon "the minds of the jury as decisive to found their verdict as "to the fact. Such we understand to be the clear principles "of law on this subject."

In Pillow vs. Roberts (13 Howard, 472), in passing upon an ingenious construction of the phrase, contrary to its ordinary meaning, the court said (p. 476), "it is easy, by very "ingenious and astute construction, to evade the force of "almost any statute, where a court is so disposed. * * "Such a construction annuls this provision of the law and "renders it superfluous and useless. The evil plainly in"tended to be remedied by this section of the act, was the

Second. There was nothing before the Circuit Court warranting it in disregarding the decision of the Commission.

I. The finding of the Commission was prima facie binding upon the circuit court.

" extreme difficulty and almost impossibility of proving the " facts in question."

In Allen vs. Hawks, 11 Pickering, 358, the court considered the weight to be given to the report of an auditor which the statute made *prima facie* evidence, and said (p. 360), " it is *prima facie* evidence upon which a jury will be " warranted to give a verdict, and bound to do so, unless over- " balanced by other evidence." In Holmes vs. Hunt (122 Mass., 505), the effect to be given to the same statute was again under consideration, and the court held that the report of an auditor is *prima facie* evidence, not only of the result of the accounts, but of the facts and inferences stated in his report as derived from the evidence before him and involved in the determination of the issues submitted to him, even if they include a finding upon the general question whether the defendant is or is not liable to the plaintiff.

In Texas and Pacific Railway Company vs. The Interstate Commerce Commission (162 U. S., p. 197), the court said (p. 238), " if the circuit court of appeals was of opinion that " the Commission in making its order had misconceived the " extent of its powers, and if the circuit court had erred in " affirming the validity of an order made under such miscon- " ception, the duty of the circuit court of appeals was to re- " verse the decree, set aside the order, and remand the cause " to the Commission, in order that it might, if it saw fit, " proceed therein according to law. The defendant was en- " titled to have its defense considered, in the first instance, " at least, by the Commission upon a full consideration of all " the circumstances and conditions upon which a legitimate " order could be founded. The questions whether certain " charges were reasonable or otherwise, whether certain dis- " criminations were due or undue, were questions of fact, to " be passed upon by the Commission in the light of all facts " duly alleged and supported by competent evidence, and it " did not comport with the true scheme of the statute that " the circuit court of appeals should undertake, of its own " motion, to find and pass upon such questions of fact, in a " case in the position in which the present one was."

In Interstate Commerce Commission vs. The Alabama M. R. Co. (168 U. S., 144) the court announced the rule with reference to the effect to be given to the findings of the Commission and the power of the court to review the same as follows (p. 175), " accordingly, our conclusion is that it was

Second. There was nothing before the Circuit Court warranting it in disregarding the decision of the Commission.

I. The finding of the Commission was prima facie binding upon the circuit court.

" competent, in the present case, for the circuit court, in " dealing with the issues raised by the petition of the Com- " mission and the answers thereto, and for the circuit court " of appeals on the appeal, to determine the case upon a con- " sideration of the allegations of the parties and of the evi- " dence adduced in their support, giving effect, however, to " the findings of fact in the report of the Commission as " *prima facie* evidence of the matters therein stated. The " inference is clear that in the absence of any evidence before " the circuit court, effect could not be given to the *prima* " *facie* case made by the findings, except by enforcing the " order of the Commission if upon its face it appeared to be " lawful."

In Louisville and Nashville Railway Company vs. Behlmer, 175 U. S., 648, the court said, " but the law attributes *prima facie* effect to the findings of fact made by the Commission, and that body, from the nature of its organization and the duties imposed upon it by the statute, is peculiarly competent to pass upon questions of fact of the character here arising " (p. 675).

In East Tennessee Co. vs. Interstate Commission, 181 U. S., 1, it was again held that the court cannot make original findings of fact overruling the Commission. The court said " whilst the court has in " the discharge of its duty been at times constrained to " correct erroneous constructions which have been put by " the Commission upon the statute, it has steadily refused, " because of the fact just stated (that the Commission is " specially charged by law with the determination of " fact) to assume to exert its original judgment on the facts, " where, under the statute, it was entitled, before approaching " the facts, to the aid which must necessarily be afforded by " the previous enlightened judgment of the commission " upon such subjects " (p. 27).

In Interstate Commerce Commission vs. Louisville and Nashville Company 102 Fed. Rep., 709, the circuit court for the southern district of Alabama thus stated the correct rule as to the weight to be given to the findings of the Interstate Commerce Commission, " the court is not " so clear as to the proposition that the rates from " New Orleans to Lagrange are unreasonable and unjust " in themselves and relatively so as compared with the rates " to Atlanta. The question as to what is a reasonable

Second. There was nothing before the Circuit Court warranting it in disregarding the decision of the Commission.

II. There was no proof contrary to the finding.

" and just rate is a very difficult one. ' No more difficult prob-
" ' lem can be presented than this ' (Ames vs. R. R. Co.,
" 64 Fed. Rep., 173 ; United States vs. Freight Asso., 166
" U. S., 332). But the findings of fact in the report of the
" Commission are made by law *prima facie* evidence of the
" matters therein stated, and the conclusions of the Commis-
" sion based upon such findings are presumed to be well
" founded and correct, and they will not be set aside unless
" error clearly appears " (p. 710).

The result of these rules is that, in the present case, the facts and inferences found in the report of the Commission should have been taken as true, unless disproved. This rule has all the more force because the testimony taken before the Commission was offered and excluded upon the defendants' objection (Record, p. 271). As the proof upon which the Commission's findings were based was not before the court, all the more were those findings conclusive unless disproved by affirmative evidence. No effort was made to do this; instead the defendants contented themselves with voluminous criticism of the conclusions reached by the Commission upon the evidence which was excluded upon the defendants' own objection. This, of course, was an empty reply to the statutory provision making the findings of the Commission *prima facie* evidence and, therefore, conclusive, unless disproved by something better than the ingenious contentions of counsel.

II. There was no proof contrary to the finding of the Commission.

As already said, the defendants put in no evidence save the circulars establishing the terminal charge (Record, pp. 95–230). These had been already considered by the Commission (pp. 9, 42, 74), so that they introduced no new element into the case. In any event, it has been already shown that they did not rebut the findings of the Commission (*supra*, pp. 10, 11, 18, 19). They showed that the charge was imposed, but they were without force as to its reasonableness.

Second. There was nothing before the Circuit Court warranting it in disregarding the decision of the Commission.

III. The decision of the circuit court was unsupported by evidence.

The appellees' contention that the so-called terminal charge must be deemed reasonable because it was imposed, is obviously without merit in view of the express finding of the Commission that under the circumstances it was unreasonable. This contention was disposed of exactly in Interstate Commerce Commission vs. Alabama Midland Co., 168 U. S., 144. The court after quoting from the opinion below, said, " the last sentence in this extract is objected to " by the Commission's counsel as declaring that the determination " of the extent to which discrimination is justified by circumstances " and conditions should be left to the carriers. If so read, we should " not be ready to adopt or approve such a position. * * It does " not mean that the action of the carriers in fixing and adjusting the " rates, in such instances, is not subject to revision by the Commis- " sion and the courts, when it is charged that such action has re- " sulted in rates unjust or unreasonable, or in unjust discriminations " and preferences " (p. 173).

III. The decision of the Circuit Court was based upon assumptions wholly unsupported by evidence.

Thus, the court said that the defendants effected " a segregation " of their freight charges from the Missouri river and other stock-ship- " ping centres to the Union Stock Yards, so that the Chicago rate did " not include the expenses or charges incurred in the delivery at the " stock yards from the tracks of defendants, and did make a " special rate from their tracks to the stock yards. * * The " act provides in what manner rates may be changed. The defend- " ants have complied with that requirement, and there can be no " doubt but that they have—as they legally might—divided up or " segregated their Chicago and terminal charges " (Record, pp. 252, 253). In this the court apparently adopted the erroneous statements of the brief for the defendants (*supra*, pp. 10, 19), rather than made an independent examination of the record.

The statement is entirely unsupported by evidence. The Commission found, in terms, that the through rate on May 31, 1894, included, as it had for thirty years, delivery at the Stock Yards (Record, pp. 25, 49, 50). Even the circuit court expressed its con-

Second. The Circuit Court was not warranted in disregarding the finding of the Commission.

III. The decision of the circuit court was unsupported by evidence.

currence in the Commission's finding, that "the defendants had no "adequate facilities for handling stock upon their own lines; "* * the stock yards were the common depot of the several "defendants for the delivery of stock consigned to Chicago" (Record, p. 252). The circulars which defendants offered made no change in this condition, but simply imposed a charge of $2 for performing this service, "*in addition*," as they say, to the rate already existing (Record, p. 206). Manifestly, there was no "segregation" or subdivision of the rate—merely an addition thereto. Calling it a "segregation" was a mere flight of fancy, without support in the record. This somewhat unusual term seems, at times, to have had an almost hypnotic effect.

There are further illustrations of the disregard of the record by the Circuit Court in reaching its conclusion. Thus it said that, "in 1893, the Stock Yards Company assumed "the entire work of hauling cars from the intersection of the "stockyards tracks with defendants' lines, respectively, to "the yards and charged the defendants therefor on the basis "of what it had cost defendants theretofore for the same "service. On June 1, 1894, the Stock Yards Company added "to this sum a trackage charge of 40 cents per car each "way" (Record, p. 252). This is erroneous. The evidence was that the Stock Yards Company hauled only cars containing dead freight (Record, p. 24). In respect to live stock, it merely imposed a trackage charge, and the defendants, in all cases, by their own motive power and with their own crews, transported the cars to and from the Stock Yards (Record, pp. 24, 33).

There was some suggestion in the record and considerable assertion in the brief for the defendants that, after the imposition of the terminal charge, the through rate to Chicago was reduced, but this was without support in the testimony (Record, p. 53), and the appellant's efforts to make proof as to the actual facts were defeated by the defendants' objection (Record, pp. 145, 157).

It is elementary that under the circumstances just stated, the tracks to the Stock Yards are to be regarded as part of the road of each defendant (Interstate Commerce Act, Sec. 1). It was, therefore, useless to discuss, as the Circuit Court did at considerable length and the defendants' brief below did almost without limit

(pp. 8–12, 50–61), whether or not $2 would be a fair compensation for that part of the contract of carriage consisting of carriage from the termination of the lines of the appellees and delivery at the Stock Yards. That service was never performed separately; that charge was never imposed separately; no live stock was ever delivered at Chicago which paid only this charge. The charge was not imposed as a separate charge, but only as a charge "*in addition*" to the rates named to or from Chicago" (*supra*, pp. 10, 11, 18, 19). It was, therefore, idle to consider this charge "by itself." No corresponding service was ever rendered "by itself" and this charge was not established as paying for independent service, but merely as "additional" to the charge already made for the entire service, including delivery at the Stock Yards.

In the most recent case upon the subject (East Tennessee Co. vs. Interstate Commerce Commission, 181 U. S. 1, 27, 28), it was held that the course followed here was erroneous; that the court has no power in the absence of new testimony to make findings of fact differing from those of the commission and reverse upon such findings; the utmost it can do is to correct any error of law and remit the case to the commission for further proceedings in accordance therewith. The discussion by defendants' counsel and by the Circuit Court as to whether this was reasonable as a separate charge was, therefore, idle, because it was not based upon the facts of the case. The question was whether it was reasonable to add this to the existing rate for transportation to the Stock Yards without any increase whatever in the service rendered.

IV. The case of Walker vs. Keenan, 73 Fed. Rep., 755, is not controlling.

The answers of the defendants relied strongly upon the decision of the Circuit Court of Appeals in Walker vs. Keenan, 73 Fed. Rep., 755. Indeed, as they offered no defensive testimony, it is not too much to say that their sole reliance is upon that authority. The Circuit Court, too, regarded that case as decisive of the present, saying "that such segregation could have been legally accomplished

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" and was both advisable and desirable, was unequivocally held in " the case of Walker vs. Keenan (73 Feb., Rep., 758). This, too, is " *the spirit of the Covington Stock Yards case* " (139 U. S., 128). The Circuit Court of Appeals entertained the same view of the effect of Walker vs. Keenan (Record, pp. 263, 265; 103 Fed. Rep., 249); and, therefore, wholly failed to notice the question of reasonableness or undue prejudice (Record, p. 265). It declined to follow the general rules upon the ground that live stock is " an " exceptional kind of traffic " (Record, p. 264). This was an error in fact, because the traffic amounts to nearly one thousand car loads per day (Record, pp. 29, 268); in any case it is difficult to see what weight this view could have in impairing the findings of the Commission.

Examination of Walker vs. Keenan, however, shows that it was not decided upon the facts found in this case. Walker vs. Keenan was decided, briefly, upon the grounds that the facts showed no obligation on the part of the carrier to deliver at points off its own line; that the Stock Yards were off the carrier's line (p. 761); that the carrier had established a rate for transportation to the termination of its own roads and an additional rate for transportation from that point to the Stock Yards and delivery thereat (pp. 760, 761, 762) and that this had been done by a separation or division of the original through rate (p. 762). So far as the report shows, it was not suggested by counsel and it certainly was not considered by the court that the through rate already covered the service of transportation to the Stock Yards and was reasonable compensation for the entire service and that the so-called terminal charge was by its very terms a mere " addition " to the through rate rendering the same unreasonable (p. 762).

This distinction between the cases was fully recognized by defendants' brief below (p. 7), which stated that " the " purpose of this application to the Commission, was to have " the terminal charge declared unreasonable—the previous " controversy having been over the legality of that charge, " even if reasonable in amount."

In addition to this, the Circuit Court of Appeals in Walker vs. Keenan disregarded the facts which controlled the decision of the Circuit Court. At the circuit the court said: " it is the duty of the carrier to furnish facilities for

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" loading, carrying and unloading. Its custody of the stock " remains and its obligation is not discharged until the ship- " per is furnished with proper facilities to unload. The " carriage includes the delivery, except at such a place as is " suitable to the delivery, of the particular thing carried. " * * * It is the duty of the carrier, therefore, to furnish " these facilities to the shipper " (64 Fed. Rep., 992, 994). The defendant had in fact no such facilities upon its own line (p. 993); its duty to furnish them was performed by " making the stock yards its depot for the delivery of live " stock " (p. 996). Upon appeal the Circuit Court of Appeals agreed with this rule of law (73 Fed. Rep., 759), but completely ignored the facts just stated. It said that " the " case is the same as though the petitioners themselves owned " the stock yards and the delivery station there and the " tracks leading to said station, and appellants charge them " $120 for transferring a car from appellants' line in Chicago " to said stock yards station (p. 761); * * * the delivery " is to be made at Chicago, but at a point away from the " carrier's line, and by means of a track not owned or pos- " sessed by the carrier " (p. 761). The court failed to give force to the fact that the carriers had " made the stock yards " its depot for the delivery of live stock at Chicago " (64 Fed. Rep., 996). But that was the crucial point of the decision below. The course of the Circuit Court of Appeals in thus disregarding tl e facts found below was manifestly erroneous (East Tennessee, Virginia & Georgia Co. vs. Interstate Commerce Commission, 181 U. S., 1, 27, 28).

In the present case, as already shown, the proof establishes a wholly different state of facts. For thirty years the Stock Yards had been the appellees' Chicago terminus for the delivery of live stock; the through rate had always embraced the entire service, including this delivery; when the so-called terminal charge was imposed no change was made in the character of the service, but there was merely an " addition " made to the previous rate for the same service; the previous through rate was reasonable for all the service up to and including delivery; nothing had occurred warranting any increase in the through rate, except the imposition by the Stock Yards Company of a trackage charge averaging $1 per car; the increase of the rate to the extent of $2 was, therefore, unjust and unreasonable, and constituted an undue preference as

against Chicago and in favor of other markets where this increase was not imposed. None of these facts were considered or so far as appears from the Circuit Court of Appeals, proved in the case of Walker vs. Keenan. Indeed, it is expressly said in that case (73 Fed. Rep., 762) that "it is not suggested, assuming "any such charge as is here in question to be legal at all, that the "amount is unreasonable." But in the present case that is the precise contention, and the proof establishes that the charge is unreasonable.

> The Commission stated this point exactly. It said, "this "decision of the circuit court of appeals the Commission "accepts. It assumes that, as a legal proposition, the carrier "may make a charge of the sort which it attempts to make "in this case, but it holds, as a matter of fact, that it is un- "reasonable to impose this terminal charge for the reason "that the rate to Chicago already includes that charge. The "circuit court of appeals says that the carrier may segregate "its rate, charging one part to a certain point and another "part beyond that point; but there is a wide difference be- "tween segregation and addition. What the carriers have "done here is to add an arbitrary sum for a service for which "they are already receiving a reasonable compensation" (Record, p. 51).

It is clear, therefore, that Walker vs. Keenan is without application to the present case. For it needs no argument to establish that this case must be decided upon the facts proved rather than upon the authority of a judicial decision in a case where these facts perhaps might have been proved, but evidently were not considered. As the court said in Louisville R. R. Co. vs. Behlmer, 175 U. S., 648, 673, "it involves a complete *non-sequitur* "to assert that because legal principles may not have been applied "to a given case, on the assumption that the facts did not render "their application necessary, therefore, in future cases, where it "was found that the facts brought the controversy within the prin- "ciples, they should not be applied."

In addition, the case of Walker vs. Keenan, was wholly inconsistent with Covington Stock Yards Co. vs. Keith, 139 U. S., 128. In that case a railway company had made an agreement with the Stock Yards Company, constituting that company its exclusive

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agent for the receipt and delivery of live stock shipped over the road, and a special charge was imposed for such delivery. The petitioner Keith had facilities of his own adjacent to the road, and prayed that the railroad company be compelled to deliver the live stock to him without exacting this extra charge. The court held that it was the carrier's duty to deliver the live stock, and that the petitioner was, therefore, entitled to receive the live stock through the Covington Stock Yards free of charge, or else upon his own premises.

It said, "and as the appellant has voluntarily undertaken to discharge the duty in these matters that rests upon the railroad company, the contention just adverted to, is, in effect, that the carrier may, without a special contract for that purpose, require the shipper or consignee, in addition to the customary and legitimate charges for transportation, to compensate it for supplying the means and facilities that must be provided by it in order to meet its obligations to the public. To this proposition we can not give our assent.

"When animals are offered to a carrier of live stock to be transported, it is its duty to receive them, and that duty cannot be efficiently discharged, at least in a town or city, without the aid of yards in which the stock offered for shipment can be received and handled with safety and without inconvenience to the public while being loaded upon the cars in which they are to be transported. So, when live stock reach the place to which they are consigned, it is the duty of the carrier to deliver them to the consignee, and such delivery cannot be safely or effectively made except in or through inclosed yards or lots, convenient to the place of unloading. In other words, the duty to receive, transport and deliver live stock will not be fully discharged unless the carrier makes such provision at the place of loading as will enable it to properly receive and load the stock, and such provision at the place of unloading as will enable it to properly deliver the stock to the consignee. * *

"A carrier of live stock has no more right to make a special charge for merely receiving or merely delivering such stock in and through stock yards provided by itself, in order that it may properly receive and load or unload and deliver such stock, than a carrier of passengers may

" make a special charge for the use of its passenger depot by
" passengers when proceeding to or coming from its trains,
" or than a carrier may charge the shipper for the use of
" its general freight depot in merely delivering his goods
" for shipment, or the consignee of such goods for its use in
" merely receiving them there within a reasonable time after
" they are unloaded from the cars " (p. 135).

The Covington Stock Yards case, therefore, settled that no charge could be made by the carrier for use of the facilities necessary for delivery, whether the carrier furnished them itself or hired some other party to do so. This was conceded in Walker vs. Keenan, but the court held that the terminal charge covered the service of transportation from the end of the carrier's line to the point of delivery at the Stock Yards. This was not supported by the proof, which was that the charge was imposed merely as "an addition" to the through rate generally. But it is manifestly unsound, in view of the fact that the carrier had no station whatever for the delivery of live stock other than the Stock Yards, and that all shipments were accepted deliverable to consignees who were located at the Stock Yards (Record, pp. 23, 34, 42, 43). Under these circumstances the Covington Stock Yards case plainly held that no charge could be made for delivering the cattle at their destination. Its force is clearly pointed out in the dissenting opinion of Judge GROSSCUP in this case (Record, pp. 265–269).

The suggestion of the circuit court of appeals in Walker vs. Keenan (73 Fed. Rep., 755, 762) that the Covington Stock Yards case was prior to the interstate commerce law is without force. In point of fact, the decision was rendered in 1891, after the passage of the act. But these general rules regarding a carrier's duties have not been changed by the interstate commerce act. On the contrary, the statute carefully provides that all common law rights are preserved (Sec. 22) and that carriage must be continuous from the point of shipment to destination, and no device can be resorted to for the purpose of preventing continuous shipments (Sec. 7).

It is, therefore, manifest that the Circuit Court was not warranted in disregarding the finding of the Commission.

CONCLUSION.

The decree should, therefore, be reversed and the cause remanded to the Circuit Court with instructions to enter a decree for the complainant.

The case is very simple. The defendants were charging a reasonable rate to Chicago which included delivery at the Stock Yards. Upon June 1, 1894, the Stock Yards Company imposed a trackage charge of $1 per car. Thereupon the defendants in their own words "added to the Chicago rate" a so-called terminal charge of $2 per car. These facts are conceded. But the rate was reasonable before that time; nothing new occurred save an addition of $1 to the expense of performing the service; there was no change in the character of the service. Surely it was unreasonable to add to the rate twice the amount of the added expense.

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No. 154.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,

against

THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY AND OTHERS.

Brief in Reply,

for the Appellant, The Interstate Commerce Commission.

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Supreme Court of the United States.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,

AGAINST

THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY and others,

October Term, 1901.
No. 154.

BRIEF IN REPLY,
for the appellant, The Interstate Commerce Commission.

A leading feature of the appellees' brief is its singular misconception of the provisions of the tariffs imposing the $2 charge. In the brief for appellant (p. 11), attention is called to the fact that the appellees state that the circulars separated the terminal service from the preceding transportation service and made a separate charge for each service. This statement is now repeated in various forms (Brief for Appellees, pp. 5, 15, 23, 31). But as already said in the appellant's brief (p. 11), this is merely imaginary as the tariffs describe the additional $2 charge as "a charge in *addition*" to the *existing* Chicago rates (Record, pp. 196, 198, 206, 207, 208, 209, 213, 214, 217, 230, 244, 246), a charge to be "*added* to the through rate" (Record, p. 196, 213, 214, 217), and the appellees' brief (pp. 31, 52) admits that this rate already covered all so-called terminal expenses. As the appellees brief itself says (p. 7), the present controversy is in regard to the reasonableness of this addition.

The brief for the appellees (p. 7) states that in Walker vs. Keenan (73 Fed. Rep., 755), it was held that the Atchison circular effected a separation of the through rate from the terminal charge, and similar statements are made at later points in the brief (pp. 67, 68). It has been already pointed out (Appellant's Brief, p. 32) that there was no suggestion in that case that the through rate already covered transportation to the stock yards and was reasonable compensation for the entire service, and that the so-called terminal charge was by its very terms a mere "addition" to the through rate rendering the same unreasonable. This distinction between the cases is stated in appellee's brief which says (p. 7), "the general "purpose of this application to the Commission was to have the "terminal charge declared unreasonable—the previous controversy "having been over the legality of that charge, even if reasonable in "amount."

The statement in appellees' brief (pp. 14–17) regarding the grounds of the Commission's decision is singularly confused. The whole matter is absolutely simple. Prior to June 1, 1894, the Chicago rate of the appellees covered delivery at the Stock Yards. This was explicitly found by the Commission (Record, p. 51). It is now admitted by the appellees' brief which says (p. 31): "It "may be admitted that before these tariffs went into effect ap- "pellees did, in fact, deliver live stock at the Stock Yards for "the ordinary Chicago rate"; and again (p. 52): "Nobody can "contend that a general transportation charge does not include "the initial receiving service and the terminal delivering service, "when it is not stipulated otherwise in the contract." Upon June 1, 1894, the appellees were compelled to pay a trackage charge of one dollar per car. Thereupon they levied a charge of two dollars per car, as their circulars in terms state as an *addition* to the *existing* Chicago rate (*supra*, p. 1). The Commission held that as they were already receiving compensation for this service the carriers ought not charge for it a second time. This appears in the quotation in the appellees' brief (p. 17) from the opinion of the Commission as follows: "What the carriers "have done here is to add an arbitrary sum for a service for which "they are already receiving a reasonable compensation" (Record, p. 51).

The grounds of the Commission's decision are so simple that it seems unnecessary to waste time in following the appellees' laborious discussion upon the subject and this will not be at-

tempted. So, too, various inaccurate statements are made in regard to the appellant's contentions; but these will not be answered in detail, as it is assumed that the appellant's views will be gathered rather from its own statements than from those of its opponents. A brief reply will, however, be made to the points contained in the brief for the appellees in similarly numbered paragraphs.

I.

The objection in appellees' brief (pp. 22–29) that the orders of the Commission are an attempt to prescribe maximum rates is answered in appellant's brief (pp. 17, 18).

The rule established by the authorities is there pointed out—namely, that while neither court nor Commission has power to make rates, there is full power to decide whether those made by a carrier are reasonable, and to restrain their enforcement if unreasonable. The appellees criticize the fact that the Commission made a recommendation that nothing should be added to the Chicago rate save the added trackage charge. This was entirely logical, since the added trackage charge was the only new feature in the situation (Record, pp. 42, 43). The propriety of recommendations by the Commission, too, is recognized in Section 14 of the Interstate Commerce Act.

This point amounts merely to an argument that the Commission is absolutely without power regarding rates, however unreasonable they may be.

II.

The appellees' second point (Brief, pp. 29–32) is that the tariffs of June 1, 1894, themselves show that the $2 charge established thereby is not a second charge imposed for services which the appellees had agreed to perform at the ordinary Chicago rates.

This point is answered upon pages 29-31 of the brief for the appellant. Its emptiness is shown by the discussion contained in the appellees' brief. The brief says: "It may be admitted that "before these tariffs went into effect appellees did in fact deliver "live stock at the Stock Yards at the ordinary Chicago rate" (p. 31); and again (p. 52), "nobody can contend that a general transpor- "tation charge does not include the initial receiving service and the "terminal delivering service, when it is not stipulated otherwise in "the contract." The present contention is that the tariffs *ipso facto* altered that situation. Once more it may be said that the tariffs, by their terms, imposed a charge "in *addition* to the Chicago "rates—in *addition* to the rates named to or from Chicago—in *addition*" to the *existing* Chicago rates (*supra*, p. 1); and they do not purport to name the places between which the carriage would be made, as they should have done under Section 6 of the Interstate Commerce Act, if they were intended to cover carriage between certain points.

> The precise language of the act is, "the schedules printed "as aforesaid by any such common carrier shall plainly state "the places upon its railroad between which property and "passengers will be carried" (Sec. 6).

It is perfectly clear that this was merely an addition to the rate already existing without any addition whatever to the service rendered, or change in the destination reached by the through rate.

The question before the Commission was whether this addition was reasonable without any change in the character of the service. The appellees' contention is that it must be deemed to have been so because the carriers imposed the charge. This is answered by the citation from Interstate Commerce Commision vs. Alabama Midland Co. 168 U. S., 144, already made upon appellant's brief (p. 29), where the court said in explaining some expressions of the opinion below, "it does not mean that the action of the carriers in "fixing and adjusting the rates, in such instances, is not subject to "revision by the Commission and the courts, when it is charged "that such action has resulted in rates unjust or unreasonable, "or in unjust discriminations and preferences" (p. 173).

III.

The third point in the brief for the appellees (pp. 33–69) is that it was competent for them to establish different charges for different services—namely, a charge for transportation to the end of their own tracks and a further charge for transportation from that point to the Stock Yards and delivery there.

The argument regarding the meaning of the tariffs contained upon pages 34–37 of appellees' brief has been just answered. The appellees endeavor to show inconsistency upon the Commission's part by referring to its inquiry concerning the cost of hauling from the junction point to the Stock Yards (pp. 34, 35). A defense based upon those facts was contained in the answers, and, therefore, the duty of inquiry was imposed upon the Commission. It has been already pointed out that the Commission did not in the language of the appellees' brief, "treat the charge as laid for both the hauling and the delivery services after leaving appellees' roads" (p. 35), but as an arbitrary addition to a through rate which already covered those hauling and delivery services (Record, p. 51). The appellees' brief misconstrues the recommendation of the Commission on the subject of terminal charge (pp. 35, 36). That recommendation was that no charge should be made *exceeding* one dollar, not that "appellees make a $1 terminal or switching charge" (Appellees' Brief, p. 36).

The quotations upon this subject from opinions of the courts (Appellees' Brief, p. 37), are of no force. In the Keenan case the point was not suggested or considered that the tariff could not be regarded as separating the charge because the entire charge was already covered by the existing rate. In the present case Judge KOHLSAAT'S view regarding the segregation of the freight charges merely expresses an opinion as to a question of fact which is concluded by the Commission's finding that no such segregation was made (Record, pp. 51, 53).

The discussion regarding the power of a carrier, "to make a "separate charge for a distinct special service, instead of making a "single aggregated charge for the total of all its services" (p. 37), covers thirty pages of the appellees' brief (pp. 37–69). It may be an important question whether, as contended, railway charges should be made in similar form to plumbers' bills, but that question is without application to the present case. The tariffs themselves

(*supra*. p. 1) and the finding of the Commission show that no such separate charges have been made in this case, but that there has been merely an *addition* to the *existing* through rate (Record, pp. 43, 50, 54). At all events no terminal charge can be collected from the shipper for what it costs the carrier to furnish and reach its own facilities (Covington Stock Co. vs. Keith, 139 U. S. 128), and this was the case here as the stock yards were in fact the carriers' depot in Chicago for delivery of live stock (Record, pp. 24, 25, 50). Under these circumstances the appellees' brief very properly apologizes (p. 38) for its prolonged discussion of the question in the abstract.

Perhaps no part of the brief illustrates more strongly the fondness of counsel for excursions outside of the record. For example, the brief states that "itemized charging * * is promotive of "fair charging and of good understanding and feeling about "charges" (p. 38). But the fact is that no charge such as the present is known anywhere else in this country, and the Commission has, therefore, found (Record, p. 28) that "whatever charge is made is in "all cases absorbed by the carrier, for in no instance except at "Chicago is a terminal of this sort imposed upon live stock." Naturally, therefore, this charge has been promotive principally of prolonged and almost acrimonious litigation for the purpose of enforcing "the law's inhibition of unreasonableness in a "carrier's methods" (Brief for Appellees, p. 38). Notwithstanding the finding of the Commission just stated, the appellees' brief, pursuing its wanderings from the record, says: "there is "no novelty in distinct charges for special parts of a railway's "services. They have long been common, both in this country and "in England" (p. 39). It then refers to charges which are understood to exist on traffic moving over the St. Louis bridge. This has no similarity to the present terminal charge; is the only known case where a bridge expense is charged separately to the shipper, and in the case of the St. Louis bridge the charge applies only to shipments between St. Louis and eastern points while, as to all other business, including live stock shipments to Chicago, the bridge charge is absorbed in the through rate. The appellees' brief further asserts that switching charges are made as separate charges (p. 40). While charges may be made for carrying freight to special delivery points, no instance is known of a case where a general terminal charge is sought to be added to a general through rate to the carrier's own depot. Such charges are always absorbed in the through

rate and deducted before *pro rating* between the carriers. They are not made the subject of a separate charge to the shipper.

It is not deemed useful or necessary to follow the discussion regarding the practice pursued in England as to separate items of charge (Appellees' Brief, pp. 41–46). As just said, there is nothing similar in railway practice in this country. So far as the question of public policy goes, Section 7 of the Interstate Commerce Act indicates the policy that shipments shall be treated "as one continuous carriage from "the place of shipment to the place of destination." This policy would obviously apply to the charges for such carriage, and since Congress has only limited power over transportation in this country the English law or practice is without application, and Congress cannot be deemed to have intended any change in the rules previously prevailing. The only authority upon the subject is the Covington Stock Yards Case, 139 U. S., 128, which it has been shown is against any such practice of separation (Appellant's Brief, pp. 34–36). Appellees' argument, too, is fully answered in the opinions of Judge GROSSCUP (Record, p. 265, 64 Fed. Rep., 992).

It is worthy of note that one consideration which the brief for the appellees urges in support of the system of separate charges is that those who do not desire all the services have an opportunity of avoiding such items of charge as are for services not needed by those shippers (pp. 47, 48, 51, 63). This is seriously advanced as an argument in favor of the right to charge for shipment to the end of appellees' roads, where there are no facilities for unloading cattle, and no shippers desire their delivery (Record, p. 25), and then making an additional charge for delivering the cattle at the Stock Yards, which the carriers have made their own depot for that purpose, and where all cattle are delivered. In the words of the Commission "if the option is nominally given the shipper, it "does not leave him any real choice. If his stock is to be marketed "at Chicago, it must go to the stock yards, and can only go in this "manner, as both he and the carrier perfectly understand (Record, "p. 25) * * it is absurd to say that the Chicago rate paid for "the transportation of that stock up to some switch in the field "or in the city where there was no facility for a delivery, and that the "transportation beyond that point was a gratuity" (Record, p. 50).

Great importance is given to a provision of the Interstate Commerce Act that the rate schedule shall state separately any terminal

charges (Sec. 6). In view of the fact that all common law rights are preserved, unless the statute is clear to the contrary (Western Union Co. vs. Call Co., 181 U. S., 92), it seems hardly likely that Congress intended to make any change in the common law upon this subject. So, too, the other provisions of the Interstate Commerce Act upon which reliance is had (Appellees' Brief, pp. 49–51) are manifestly for the purpose of bringing lawful charges of the sort within the operation of the Act rather than of authorizing charges which were otherwise unlawful. It seems scarcely possible that Congress intended to enact any new law upon the subject which, as it would apply alone to inter-state shipments, would lead to endless confusion arising from differing rules regarding intrastate business.

The discussion of the Covington Stock Yards Case (Appellees' Brief, pp. 52–55) is answered upon pages 34–36 of the brief for appellant. The appellees' contention seems to be that the Covington case held that such separate charges could be made when authorized by a special contract (Brief for Appellees, pp. 52, 53), and that this rule applies to the present case, because the appellees announced on June 1, 1894, that as to any subsequent shipper a separate charge of $2.00 would be made in addition to the existing rate. In this way the appellees seem to think that a special contract within the Covington case was made as to all subsequent shippers, notwithstanding that they had no option upon the subject, as found by the Commission (Record, p. 25). This is erroneous because the court, in the Covington case, announced the general rule as to the obligation of a carrier and applied the same, although there was no special contract in the case between the carrier and the shipper. Moreover, the appellees' contention begs the real question, which is, whether this additional imposition by the carriers was reasonable under the circumstances of the case. Even if there were a special contract it would be good only in case it was reasonable.

For reasons just stated it seems unnecessary to follow the further statement of English principles contained upon pages 58–62 of the appellees' brief. Aside from the objections to matters of the sort, already suggested, those cases are not parallel to the present because here the appellees have made the Stock Yards their depot for the delivery of live stock (Record, pp 25, 50), while in those cases the charge was made for "getting cars to a special place" (Appellees' Brief, p. 59).

Further excursions outside of the record may be noted. Thus,

it is stated upon page 64, that the rates are constantly fluctuating. No proof of the sort was made, and as to live stock rates, owing to the fact that the traffic is gathered at local points, this is not the case. Again, it is stated (p. 64), that perhaps most of the live stock rates to Chicago are made from shipping points on the roads of companies other than the appellees. In point of fact at least eighty per cent of the business to Chicago originates on the roads of the appellees.

The discussion in regard to whether the appellees have made the Stock Yards their Chicago depot for the delivery of live stock, contained upon pages 65–68, consists largely of verbal criticisms, but its substantial result is that the live stock business consisted really in delivering cattle at the Stock Yards and nowhere else, as so abundantly found by the Commission. As this was so prior to June 1, 1894, no additional service was rendered thereafter justifying the increase of rates (Record, pp. 42, 43). The baseless claim which was persistently urged in the pleadings and on argument below, (Record, p. 25, 50), that prior to June 1, 1894, the service for delivery at the Stock Yards was made gratuitously while subsequently a proper charge was made therefor, seems now to be abandoned.

IV.

The fourth point of the brief for appellees is that under the Interstate Commerce Act the courts are to exercise their independent judgment upon the facts, and that the conclusions of the Commission upon questions of fact must be rejected by the courts when they are not warranted by the Commission's special findings or by extraneous evidence (pp. 69–76). The rules as to this are fully stated in the brief for appellant (pp. 25–28).

In addition, it may be observed that the evidence before the Commission is not contained in this record, having been rejected under the objection of the appellees (Record, p. 274). There is nothing in the record showing that the Commission made special findings upon all the facts, nor indeed was it bound to do so. It did find the ultimate fact that the imposition of the charge in question under the

circumstances was unreasonable. That finding under the statute is entitled to effect as *prima facie* proof. The contention of the appellees that the special findings of the Commission are inconsistent with this ultimate finding is based merely upon the Commission's finding that the cost of the terminal service was not less than the amount of the additional $2 charge (Appellees' Brief, pp. 9, 12, 15, 56). But this was not at all inconsistent with the finding that the appellees were already being paid for this service, and that it was, therefore, unreasonable to impose a further charge therefor.

V.

The fifth point contained in the appellees' brief is that only the $2 charge and not the general Chicago rate was investigated by the Commission, and that the only question in the proceeding is whether the terminal charge is in itself lawful. But the question of the aggregate rates and charges including the $2 charge has been from the beginning the question at issue. That issue was clearly made in the pleadings (Petition, Rec., p. 9; Answers, pp. 70, 79, 88, 104, 109, 129).

The brief attaches considerable importance to some expressions in the opinion of the Commission to the effect that the through rates have been reduced (p. 78). This is fully answered by the Commission's finding upon the rehearing that the "reduction did "not, however, apply to all the territory to which the terminal charge "applies, but only to certain limited portions of that territory, and the "purpose of it was to equalize the rate from those sections as com-"pared with other sections. There is no claim that this reduction "was made on account of the imposition of the terminal charge, "or that it would not have been made had no terminal charge been "imposed, nor that, if the Chicago rate, June 1, 1894, ought to "have carried with it a delivery at the stock yards the present "rate should not likewise do so" (Record, p. 53). It should be observed also that the appellant's efforts to make proof upon the trial as to the actual facts were defeated by the appellees' objection (Record, 145-157). The appellees contend that the through rates were not the subject of examination because they are so numerous that it would be physically impossible for the Commission to make such examina-

tion (Appellees' Brief, p. 79, 80), and, therefore, there must be a failure of justice. There is no evidence that such was the case; the appellees started to make proof under their allegations that the rates were too low, but abandoned the matter, leaving the Commission nothing to consider upon the subject, except the presumption that the railroads had made compensatory rates.

This entire point misapprehends the ultimate question involved, which is not whether the through rates alone were reasonable, but whether it was proper to add to such rates a second charge for performing a service which appellees now concede (Brief, pp. 31, 52) was already covered by the existing rate.

VI.

The sixth point of the appellees' brief is that the terminal charge is shown by the Commission's findings to be less than the actual cost of the service, and is therefore conclusively proved to be reasonable (pp. 80–90).

This, again, misconstrues the ultimate question, which, as just said, is whether it was proper to add to the existing through rates a second charge for a service which was already covered by those rates. The appellees argue that there was no proof that the through rates were themselves reasonable and were not unreasonably low, and that, therefore, it cannot be claimed that the addition of the terminal charge rendered them unreasonably high. The appellees suggest that the appellant assumes that the rates before June 1, 1894, were exactly right, "though there is no evidence whatever on that point" (p. 84). Once more it may be said that the evidence upon which the Commission based its findings is not before the court, although it is a fact that the tariffs of the appellees were referred to as part of the complainant's petition (Record, p. 13), and that the Commission's finding that those rates must be taken as reasonable is not shown to be erroneous. The expressions of the Commission upon that subject were as follows:

> "Some attempt was made on the hearing to show that "the present rate (through rate) was unreasonably low, and

"some attempt was made, on the other hand, to show that "it was unreasonably high. Nothing was developed on either "side, however, which warrants a finding of fact, nor do "we understand that either party seriously makes any claim, "that the Chicago rate is unreasonable, either as being too "high or too low" (Record, p. 25).

"May 31st, there was in effect a certain rate on live stock "from various points to Chicago, and that rate, upon the "record in this case, must be taken to be a just and reason- "able one. The defendants intimate in their answers that "this rate has been forced down until it was too low, and "something was said in the proof looking in the same direc- "tion. Upon the other hand the complainants started in to "prove that the rate at that time was too high; but, as is "found by the case, both these claims were virtually aban- "doned. There is nothing in the record before us to show "that the rate was other than a right one, and we assume "that May 31st the rate in effect was just and reasonable" (Record, p. 49).

Again, upon rehearing:

"We think and find that the Chicago rate on May 31, "1894, included, as it had included for the last thirty years, "a delivery and unloading of the stock at the Union Stock "Yards, and that rate, upon the record in this case, was a just "and reasonable one" (p. 50, see also pp. 54, 55).

"For many years previous to June 1, 1894, the defendants "had maintained a certain fixed relation in rates between "these different cattle markets. On June 1st they increased "the expense of placing cattle upon the Chicago market by "just $2 per car. If the relative rates were right before, "and we may fairly presume, in the absence of any claim to "the contrary, that they were, this charge disturbed those "rates to that extent" (Record, p. 54).

It will be observed that appellees in their answers set up as a defense and justification for making the $2 charge that the Chicago live stock rates had become too low. This was in the nature of a special defense which they thought necessary to allege, and the burden was upon them to prove it, but they did not do so. The fact was that they had voluntarily maintained for years the rates, whatever they were, and the fair and logical deduction was that such rates were, to say the least, sufficiently high to be a reasonable compensation for the service customarily performed. It would scarcely be rational to contend otherwise in the absence of evidence to show that such was not the fact. If such evidence existed it was best known to the appellees, and it is a familiar rule of evidence that the burden of proof is upon

him who has peculiar knowledge of the fact, and every presumption is indulged against him if he fails to produce the evidence. It is legitimate to presume that, if the facts were favorable, appellees would have proved them. They were well aware when the case was before the Circuit Court of the presumptions which the Commission had indulged. They thought it necessary to again plead that the through rates had become too low as a justification for the terminal charge, but did not prove it.

> In Interstate Commerce Commission vs. East Tennessee Company, 85 Fed. Rep., 107, the court said (pp. 114, 115), "I think the question of the justness and reason-
> "ableness of rates under the first section is colored
> "by the other provisions of the law, and by
> "the general policy of the whole enactment, which is
> „ to effect the equality of charges. And, at all events, it
> "seems to me clear that the charges accepted for a longer
> "haul may be referred to for the purpose of considering
> "the reasonableness of charges made for the shorter haul.
> "Such comparisons are applied to every other kind of busi-
> "ness, and the fact that there may be competition in such
> "business would not be a controlling consideration, for the
> "presumption would always be that the compensation
> "charged for the service or thing is sufficient to be reasona-
> "ble. The presumption is not, of course, a conclusive one,
> "but would seem a fair one in the absence of special circum-
> "stances." These principles were not criticized in the subsequent opinions in the case (99 Fed. Rep., 52; 181 U. S., 1).

Therefore, it cannot be claimed that the Commission's finding of this presumption of fact—that is, that the through rate was reasonable and just—is contrary to law or unsupported by the evidence. On the contrary, it is but the necessary conclusion from the very acts and conduct of appellees. While the Commission finds it as a presumption, it is no less a fact proven by circumstantial evidence, and the circumstances are such that no other conclusion can be reached.

The brief of the appellees again takes refuge behind the difficulty of showing the facts as to the numerous Chicago rates (pp. 85, 86). Those rates, it says, should not be taken as reasonable because it would be almost impossible to prove that affirmatively in regard to each one of them. The contention seems to be that as that fact is difficult of proof, therefore there must be a failure of justice. Again, the brief says that the element of unreasonableness, if any, must be in the Chicago rate rather than in the terminal charge, because the terminal charge is shown to be less than the expense of

delivery at the Stock Yards. This again curiously misapprehends the point decided by the Commission. This was that the Chicago rate was presumptively reasonable; that it actually included the terminal services; that the addition of $2 to the rate without any addition to the services rendered, made the rate unreasonable, and that the removal of the $2 charge would restore the previous condition of reasonableness. It seems scarcely necessary to follow the appellees' brief in its minute verbal criticism of the language of the Commission (pp. 88, 89). It must be evident that the decision of the Commission was as just stated.

VII.

The seventh point of the brief for appellees is that the terminal charge does not constitute an undue prejudice against Chicago (pp. 91–95). This is discussed in the appellant's brief, pages 10, 17, 24, and is satisfactorily answered in the extract from the opinion of the Commission therein set forth (p. 10).

VIII.

The eighth point of the brief for appellees is that the Interstate Commerce Commission is not empowered to administer the Anti-Trust Act (pp. 95–98). This is answered by the appellant's brief, pages 22–24. The point upon which so much stress is laid, that the violation of the Anti-Trust Act was not pleaded or found by the Commission, is met by Gibbs vs. Consolidated Gas Company, 130 U. S., 396, where the illegality of a contract was not raised by the pleadings, but merely appeared upon the trial, and yet the court refused to enforce it.

The appellees' treatment of this objection is singularly inconsistent, in view of the fact that at an earlier stage of the case they made a motion to dismiss the intervening petition of the Chicago Live Stock Exchange, upon the ground that it was an illegal combination within this statute (Record, pp. 31, 32).

IX.

The questions as to the exclusion of evidence are discussed upon appellant's brief, pages 20, 22, 30.

X.

The discussion as to whether a court has jurisdiction to modify orders of the Commission seems not to be specially important at present. It may be observed, however, that under the Interstate Commerce Act, Sec. 16, the court has the general powers of a court of equity to determine the matter "in such manner as to do "justice in the premises."

Conclusion.

As already said (Brief for Appellant, p. 37), the case is extremely simple. The defendants were charging a reasonable rate to Chicago, which, as the appellees now admit (Brief, pp. 31–52), included delivery at the Stock Yards. Upon June 1, 1894, the appellees, in their own words, "added to the Chicago rate" a so-called terminal charge of $2 per car. As just said, the rate was reasonable before that time; nothing new occurred save an addition of $1 to the expense of performing the service; there was no change in the character of the service. Manifestly, it was unreasonable to add to the rate twice the amount of the added expense. These simple propositions were found by the Commission, and are not shaken by the voluminous attack which the appellees have made upon them.

It is, therefore, again submitted that the decree should be reversed, and the cause remanded to the Circuit Court, with instructions to enter a decree for the complainant.

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No. 154.

Sup. Ct. Brf. of Willcox for Appt.

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Filed Nov. 13, 1901.

No. 154.

INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

CHICAGO, BURLINGTON AND QUINCY COMPANY AND OTHERS.

Memorandum Regarding Corrections of Citations of Record Contained in Briefs for Appellant.

(1.) Principal brief, p. 4, line 5 from the bottom, the citation "pp. 24, 25" should read "pp. 24, 33."

(2.) Principal brief, p. 28, line 15 from the top, citation "p. 271" should be "p. 250."

(3.) Brief in reply, p. 2, line 20 from the top, citation "p. 51" should read "pp. 50, 51."

(4.) Brief in reply, p. 5, line 17 from the top, citation "p. 51" should read "pp. 50, 51."

(5.) Brief in reply, p. 9, line 4 from the bottom, citation "p. 274" should read "p. 250."

(6.) Brief in reply, p. 11, line 6 from the bottom, citation "p. 13" should read "p. 10."

The authority to which Mr. Day referred in the argument as to be noted under subdivision I of the brief in reply for the appellant is Aberdeen *vs.* Northern R'y Co., 3 Railway and Canal Cases (Neville & Macnamara), 205, 231, and 232.

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APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

INTERSTATE COMMERCE COMMISSION,
Appellant,

vs.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY et al.,
Appellees.

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BRIEF FOR APPELLEES.

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Appellees.

BRIEF FOR APPELLEES.

The proceeding in which the present appeal has been taken was begun by petition presented March 3, 1899, by the Interstate Commerce Commission to the Circuit Court of the United States for the Northern District of Illinois, Northern Division, whereby the Commission sought enforcement of orders made by it under date January 20, 1898, and August 4, 1898. The proceeding is under Section 16 of the act of Congress approved February 4, 1887—known generally as the Interstate Commerce Law—as amended by the act of March 2, 1889, Section 5. By the first of its orders the Commission directed the Atchison, Topeka and Santa Fe Railway

Company, the Chicago, Rock Island and Pacific Railway Company, the Chicago and Alton Railroad Company, the Chicago, Burlington and Quincy Railroad Company, the Chicago and North-Western Railway Company, the Chicago, Milwaukee and St. Paul Railway Company, the Chicago Great Western Railway Company, the Illinois Central Railroad Company and the Wabash Railroad Company (being the appellees) "to cease and desist, on or before the first day of April, 1898, from charging, demanding, collecting or receiving (in addition to their regularly published transportation charges) the sum of $2 per car load of live stock as compensation for terminal service rendered in making delivery of live stock at the stock yards of the Union Stock Yards and Transit Company, in the City of Chicago, State of Illinois, which said charge is found and held in and by said report and opinion of the Commission to be unreasonable, unjust and unlawful." (Rec., 46, 47.) The second of the Commission's orders, bearing date August 4, 1898, is a mere reiteration of the first order, and was made after application for rehearing. (Rec., 55.)

The Circuit Court dismissed the Commission's petition, after hearing, on the merits. (98 Fed. Rep., 173.) Appeal was thereupon taken to the Court of Appeals for the Seventh Circuit, where the action of the Circuit Court was affirmed. (103 Fed. Rep., 249.) This appeal is taken from the judgment of the Circuit Court of Appeals.

STATEMENT OF FACTS.

The general history of this litigation may be correctly, and for present purposes sufficiently, outlined as follows, details being left for more convenient presentation in connection with the points of this brief to which they are pertinent.

1. The Union Stock Yards and Transit Company is a corporation which was organized in 1865, and has ever since owned and maintained extensive stock yards in the southern part of Chicago and a considerable length of tracks (at present 240 miles) connecting the Stock Yards with the various railroads of Chicago. (Rec., 22.) The roads of some of the appellee companies are directly reached by these tracks of the Stock Yards Company; but the roads of the Great Western, the Burlington, the Milwaukee and St. Paul and the Atchison companies do not directly connect with the tracks of the Stock Yards Company. None of the roads of appellee companies runs to the Stock Yards, and consequently cars of live stock arriving in Chicago over appellees' roads, and consigned to the Stock Yards, have to traverse the connecting tracks of the Stock Yards Company; and, also, if the live stock arrives over the Great Western, the Burlington, the Milwaukee and St. Paul, or the Atchison road, have to traverse the tracks of one or more independent railroad companies intermediate between the tracks of said appellee companies and the tracks of the Stock Yards Company. No appellee has any proprietary interest whatever in, or control over, the tracks or any property of the Stock Yards Company; and the carriage of live stock to the Stock Yards over those tracks is merely under a revocable license.

The distance from the Stock Yards to the point where cars of live stock leave the roads of appellee companies (consequently the length of track not owned by appellee companies, which cars of live stock have to traverse in going from appellees' roads to the Stock Yards) varies from two to nine miles. (Rec., 27.)

Before June 1, 1894, the Stock Yards Company made no charge to the railroad companies for use of its tracks in getting cars of live stock to its yards; but on that date, for reasons of its own, the Stock Yards Company imposed, and it has since maintained, a trackage charge for such use of its tracks, varying from 40 cents per car each way in the case of the shortest routes to 75 cents per car each way for the longest routes. (Rec., 24.) Since 1878, none of the railroad companies has had any financial interest whatever in the Stock Yards Company, though until June 1, 1894 (when the stated trackage charges were established), certain of the railroad companies were allowed representatives on the directory of the Stock Yards Company. Even before 1878, not all the railroad companies held stock of the Stock Yards Company; and the Great Western, Milwaukee and St. Paul, Atchison and Wabash Companies never had any financial interest in the Stock Yards Company. (Rec., 23.) When the trackage charges were ordered by the Stock Yards Company in 1894, the railroad officers who were on its directory resigned from their directorship in protest, and since then no railroad company among appellees has had any representation on the board of directors of the Stock Yards Company, or any relation of interest or control with that company. (Rec., 24, 43.) It is undisputed, however, that the Stock Yards Company has a legal right to charge the railroads for the use of its tracks. (Rec., 24.)

Before June 1, 1894, and while the Stock Yards Company was making no charge for use of its tracks for trans-

portation of live stock to the Stock Yards, the appellee companies made no terminal charge for the service of carrying live stock off their own roads to the Stock Yards and there delivering the stock. Their tariffs, consequently, up to June 1, 1894, simply made a single entire charge (varying, of course, according to place of shipment) to Chicago; and this so-called "flat rate" applied wherever in Chicago delivery might be asked by the shipper. On June 1, 1894, however, tariffs (the regular filing and publication of which according to law is not questioned) were made effective by each of appellee companies, whereby it was provided that after June 1, 1894, the "flat" or ordinary Chicago rate should apply only on shipments of live stock not going to the Union Stock Yards, but deliverable elsewhere in Chicago on appellees' own lines of road, and that an additional charge of $2 per car—beyond the flat rate—would be made on live stock delivered at the Union Stock Yards. (Rec., 24.) These tariffs, whereby appellees created a terminal charge for the terminal service of hauling live stock over the tracks of the Union Stock Yards and Transit Company (and in the case of four appellees, over the tracks likewise of other railroad companies intermediate between such appellees' own tracks and the Stock Yards Company's tracks), and for the further terminal service of having the stock delivered at the Union Stock Yards, are a central point in the defense of appellees against the orders made by the Interstate Commerce Commission; and these tariffs are set out at length in the record, as follows, for the several appellee companies:

Chicago and North-Western Railway Company. (Rec., 196.)

Chicago and Alton Railroad Company. (Rec., 196.)

Atchison, Topeka and Santa Fe Railway Company. (Rec., 197, 198, 199, 205, 206.)

Illinois Central Railroad Company. (Rec., 207, 208.)

Chicago, Burlington and Quincy Railroad Company. (Rec., 208.)

Wabash Railroad Company. (Rec., 209, 213.)

Chicago Great Western Railway Company. (Rec., 213.)

Chicago, Rock Island and Pacific Railway Company. (Rec., 214, 215, 216, and 220.)

Chicago, Milwaukee and St. Paul Railway Company. (Rec., 220, 223, 229 and 230.)

As filed on behalf of all appellees by the Western Freight Association. (Rec., 244, 246.)

The effect of these tariffs of June 1, 1894, in establishing after that date separate charges for transportation to Chicago and for the further and different service of transportation over the tracks of the Union Stock Yards Company (and, in certain instances, over intermediate tracks), and delivery at the Union Stock Yards, will be fully presented in the course of the following brief (Points II and III), upon consideration of their exact language. It may be added now that these tariffs are all substantially alike in their wording, and are just such as the Court of Appeals directly passed upon in *Walker* v. *Keenan*, 73 Fed. Rep., 755.

The decision just cited closed what may be called the first half of the controversy over the $2 terminal charge, and was as follows: The Atchison, Topeka and Santa Fe Railroad Company (predecessor of the appellee, Atchison Railway Company) being in the hands of receivers when the terminal charge was established in June, 1894, a commission merchant at the Union Stock Yards named Keenan petitioned the Circuit Court of the United States for the Northern District of Illinois (which had appointed the receivers) to direct its receivers to deliver to him at the stock yards, without payment of a terminal charge, and

upon payment merely of the flat Chicago rate, four cars of cattle which had been shipped by him from Kansas City over the Atchison road. Thirty-six other commission merchants doing business at the Stock Yards filed a similar petition, asking general direction to the receivers to transport live stock to and deliver it at the Union Stock Yards for the flat Chicago rate, and without collection of the terminal charge. These petitions, of course, directly presented two questions: (1) Whether separate charges could lawfully be made for the transportation as far as Chicago and for the terminal transportation from the Atchison Company's own road over the Union Stock Yards Company's tracks to the Union Stock Yards; and (2) whether the Atchison Company's tariff of June 1, 1894, sufficed to effect such a separation of charges. The Court of Appeals decided both questions in the affirmative, and denied Keenan and the other commission merchants the relief they had prayed. (73 Fed. Rep., 755.)

Application was made to this court for a writ of certiorari, to review the judgment of the Court of Appeals, and was supported by briefs; but the application was denied.

After defeat in the courts on the question whether a terminal charge could lawfully be made in addition to the flat Chicago rate, resort was had to the Interstate Commerce Commission, and a proceeding before that Commission was begun, which resulted in the orders now sought to be enforced. The general purpose of this application to the Commission was to have the terminal charge declared unreasonable,—the previous controversy having been over the legality of that charge, even if reasonable in amount. The Cattle Raisers' Association of Texas filed the complaint before the Commission September 1, 1896 (four months after the decision in the Walker-Keenan case). (Rec., 2.) An intervening petition was filed March 10, 1897, by the Chicago Live Stock Exchange (being an association

of live stock commission merchants, including in its membership the thirty-seven petitioners in the Walker-Keenan proceeding). (Rec., 3.) After answer and hearing, the Commission, on January 20, 1898, filed its findings and opinion (Rec., 18–45), and the first order which is the subject of this appeal. (Rec., 46.)

Appellees moved the Commission for a further hearing on the ground that its finding that the terminal charge is unreasonable contravened, not only undisputed evidence that the terminal service actually costs more than the amount of the terminal charge, but also admissions by the complainants that the charge is reasonable. (Rec., 76, 94, 111, 136.) The Commission, upon consideration of the application for rehearing, modified its findings somewhat as to the reasonableness of the $2 charge, indulged itself in considerable further argument, and reiterated its previous order. (Rec., 48, 55, 55-6.)

2. While many of the facts found by the Commission may best be presented (with proper references to the portions of the record where they appear) in connection with the various defenses on which they bear, the attention of the court is at once called to the fundamental fact that the Commission explicitly finds that the actual cost of the service of carrying a car of live stock to the Union Stock Yards from the point of connection of any of appellees' tracks with the tracks of the Union Stock Yards and Transit Company (or with the other intermediate tracks which have to be traversed in passing from appellees' tracks to the Stock Yards Company's tracks) is not less than $2 per car; and that for many of the appellee companies such actual cost of the terminal service far exceeds $2 per car. Nor is any profit whatsoever included in this finding of the cost.

Thus the commission finds:

"It has already been indicated that the different defendants make connection with the tracks of the Union Stock Yards and Transit Company at various points and in various ways, so that the actual expense to the several defendants of transporting a carload of live stock from their own iron to the stock yards varies in different cases.

The intervenor conceded upon the trial, and the complainants did not seriously question, that the amount of this charge was reasonable it, under the circumstances, the charge should be imposed. Before the close of the testimony the several defendants were requesetd by the Commission to furnish statements showing the actual or estimated expense to them in each case of making delivery from their several tracks to the Union Stock Yards.

Such statements have been filed and they make the following showing:

Illinois Central Railroad, via 75-cent trackage route	$2.23	
via 40-cent trackage route	1.65	
Average		$1.94
Chicago, Burlington and Quincy Railroad		2.25
Chicago and Alton Railroad		2.05
Chicago, Milwaukee and St, Paul Railway, via one route	2.67	
via other route	2.25	
Average		2.46
Atchison, Topeka and Santa Fe Railway		2.28
Chicago Great Western Railway (average of 10 cars to train)		2.20
Chicago and North-Western Railway		3.34
Wabash Railroad		1.86
Chicago, Rock Island and Pacific Railway		1.65
Total via nine lines		$20.03
Average		2.22

In some instances the foregoing figures are based upon the actual cost of operations for a year or longer, while in other cases they are estimates. There does not seem to be much difference between the actual

result and the estimate, having reference to the service performed. Several things should be borne in mind in reference to these figures. In all cases the unloading charge paid by the defendants to the Union Stock Yards & Transit Company of 25 cents per car is included. All the defendants apparently maintain offices at the Union Stock Yards, in most, if not all, cases the expense of these offices or agencies is included. In every case not only is the trackage paid the Union Stock Yards and Transit Company embraced, but also whatever trackage charge, if any, a particular railroad company is obliged to pay some other company for the purpose of reaching the tracks of the Union Stock Yards and Transit Company. For instance, the Chicago Great Western Railway Company includes a charge of 75 cents for trackage over the tracks of the Chicago Central; the Chicago, Burlington and Quincy includes a trackage charge of 35 cents over the Pan Handle; the Chicago, Milwaukee and St. Paul includes a trackage charge of 65 cents in one case and 37½ cents in the other case which it pays in reaching the iron of the stock yards; the Atchison, Topeka and Santa Fe uses the tracks of the Chicago and Grand Trunk, for which it pays about 65 cents per car. These trackage charges paid to other parties than the Union Stock Yards and Transit Company are in all cases actually paid and are in all cases necessary to reach the stock yards." (Rec., 25–26.)

It should be said, in explanation of portions of the foregoing quotation, that the Illinois Central Company and the Milwaukee and St. Paul Company can reach the Union Stock Yards by two different routes of different lengths,—of which one or the other is used as the shipment arrives at Chicago over one or another route; and hence the cost of the terminal service for these two companies varies with the shipment. Further explanation as to the Illinois Central Company should be made in the language of the Commission itself (at the end of its opinion on the application for rehearing):

"As stated in the former report and opinion, the Illinois Central Railroad Company transfers from its

lines to the Union Stock Yards over two routes, by one of which the trackage charge is 75 cents and by the other 40 cents each way. It appeared from the statement furnished by that company that there were certain other differences in the cost of transportation, making the cost via the 75-cent trackage route $2.23, and by the 40-cent trackage route $1.65, an average of $1.94, which was so stated.

Counsel for that company now call attention to the fact that, inasmuch as more live stock is carried over the 75-cent route than over the other, the actual average cost to that company is not $1.94, but is $1.997 per car." (Rec., 55.)

The Commission's second opinion, rendered upon the application for rehearing, finally and emphatically disposed of the question of the reasonableness of this terminal charge, as follows:

"The application is based upon the ground that the complainant and the intervenor admitted upon the hearing 'that the $2 terminal charge is a reasonable charge, provided any charge could legally be made for the terminal service,' and it is urged that in the face of this admission the charge ought not to be found unreasonable.

The report and opinion of the Commission already published finds that the complainant did not make the admission claimed by the defendants, and an examination of the record apparently supports that finding. At the bottom of page 540 of the testimony appears the following:

'Mr. Newlin: The gentleman said something about an admission. So far as I am concerned I do not know what he refers to.

Mr. Bowers: The admission in this instance was made by the very gentleman who asks the question.

Com'r Prouty: That if this charge was proper to be imposed, it was a reasonable charge.

Mr. Newlin: I did not admit that.'

So far as we can ascertain, this is the last reference made in the record to any admission of that sort. Mr. Newlin acted as the sole attorney and representative for the complainant, and we do not

think it can be said upon this state of the record that the complainant is concluded by any admission of the kind claimed. The case already exactly states the fact in that particular.

The Commission itself did, however, state upon the hearing at various times, in terms upon which the defendants were justified in relying, that no question could be successfully made as to the reasonableness of this charge in certain aspects. Just exactly the scope of that intimation can be understood by referring to the circumstances under which it was given. The defendants were proceeding to show by testimony in each case that the actual cost to them of transporting these carloads of live stock, including the trackage charge and the cost of unloading, was equal to or in excess of $2. Thereupon it was suggested by the Commission, admitted by the intervenor, and at first partly admitted by the complainant, that the cost of service, including the trackage charge and the cost of unloading, was sufficient to justify the imposition of this terminal charge, provided, under the circumstances of the case, it could properly be imposed. We understand that the defendants are given the full benefit of this in the report and opinion already filed. *To remove all doubt upon that subject, however, if it is not clearly found, we now find that, looking entirely to the cost of service, and including as a part of that cost the trackage charge paid the Union Stock Yards and Transit Company and the unloading charge paid that same company, the amount of this terminal, if, under the circumstances of this case, it is proper to impose the charge, is reasonable.* If any modification of the present findings is necessary, they are hereby modified to that extent." (Rec., 48, 49.)

3. Any claim of undue prejudice to Chicago through this terminal charge was likewise effectually disposed of by the Commission itself, which found that, if the charge is not unreasonable in amount, it creates no unjust discrimination. Thus,—

"There undoubtedly may be instances in which the adjustment of rates, each of which is entirely reasonable and proper in itself, works a violation of

the third section, but the present case is not one. *We hold that, if the imposition of this terminal charge at Chicago is just and reasonable, the fact that similar charges are not imposed by the defendants at the other competing stock markets referred to does not make this an undue preference under the third section.*" (Rec., 38.)

The detailed facts from which this conclusion was reached are fully stated in the Commission's findings. (Rec., 36-38.)

In its opinion upon the application for rehearing the Commission re-stated the same view, that the terminal charge is not discriminatory except to such an extent as it may be inherently unreasonable. Thus,—

"The claim of the complainant, and especially of the intervenor, was that a uniform terminal charge must be imposed at all these stock markets, and that inasmuch as the defendant absorbed the corresponding terminal charges at other stock markets, they must absorb this charge at Chicago. We held that this did not necessarily follow; that the carrier was free to a certain extent to absorb or not absorb, to make or not to make charges of this character according to the exigencies under which its business was conducted. The conclusion of the Commission upon that point was stated in the following words:

'*We hold that if the imposition of this terminal charge at Chicago is just and reasonable, the fact that similar charges are not imposed by the defendants at the other competing stock markets referred to does not make this an undue preference under the third section.*'

We have decided, however, that *to the extent of* $1 *the imposition of this terminal at Chicago is not just and reasonable,* and the question now is, how does *that* leave the case as to the third section?

For many years previous to June 1, 1894, the defendants had maintained a certain fixed relation in rates between these different cattle markets. On June 1st they increased the expense of placing cattle upon the Chicago market by just $2 per car. If the relative rates were right before, and we may fairly presume, in the absence of any claim to the contrary,

that they were, this charge disturbed those rates to that extent. If the increase in the Chicago rate was justifiable, no undue prejudice would be worked against Chicago. We have found that to the extent of $1 per car it was unjustifiable. It results, therefore, that the defendants have disturbed the just relation of rates between these different centers by imposing, without reason or justification, an additional charge upon the rate to Chicago.

There being no excuse for the imposition of this additional charge, we think it necessarily follows that an undue prejudice against the market of Chicago is thereby created. *It is the want of justification which makes the preference undue.*" (Rec., 54, 55.)

The question whether the terminal charge is unjust as a discrimination is therefore practically eliminated from the case; for the Commission finds it not to be discriminatory, unless unreasonable; and by its order forbids only one-half, *i. e.*, $1 of the charge, which the Commission found to be the measure of its unreasonableness. If the charge is unreasonable, it is of course unlawful; and no inquiry whether it is an unjust discrimination need be pursued. If, on the other hand, the charge is reasonable, the Commission has itself declared it not to be an unjust discrimination.

4. It is worth while to notice at the outset how the Commission came to decide against one-half ($1) of the terminal charge, after finding that the terminal service actually costs each appellee company more than $2, and that no undue prejudice is wrought by a charge that is reasonable. The somewhat extraordinary process by which the Commission reached this result consisted (if we may attempt to indicate the fundamentals of the Commission's reasoning) of two theories:—

(1) That a charge may be unreasonably large in spite of its not exceeding the cost of the service for which it is

imposed, in consequence of extraneous considerations of "equity" and general fairness.

(2) That the $2 charge is levied for a service (*i. e.*, transporting from appellees' own lines to the stock yards over the Stock Yards Company's tracks, and over intermediate tracks of other companies, and delivering at the stock yards), for which the flat Chicago rate is likewise levied—notwithstanding the express tariffs of June 1, 1894, to the contrary—and that consequently the shipper is called upon to pay twice for the terminal service.

The following brief extracts from this argument may serve to show that we do the Commission no injustice:

> "It must be accepted as the law of this case that there is no legal obligation, under the circumstances presented, upon the part of the various carriers to make delivery at the Union Stock Yards. They have a legal right to impose a charge of the nature which they do impose.
>
> We do not think, however, that this is the question presented to us for determination. Most questions coming before this Commission are questions of fact, not questions of law. Whether a particular thing should be considered as a legal question, but when it has once been determined what elements, as a matter of law, are to be taken into account, almost every case resolves itself into a question of judgment. Upon a survey of the whole situation, looking at these matters from the standpoint of both parties, what, in fairness to the public and the railroads alike, ought to be done? This is the thing for determination here. That the defendants may charge one sum to Chicago and an additional sum for delivery at the Union Stock Yards, as a legal proposition, has been settled. *Whether they ought to make the charge they do, or any charge, or whether the charge for delivery is already fairly included in the rate, is a proposition of fact for consideration.* Under all the circumstances, is this terminal charge a 'just and reasonable' one under the first section?" (Rec. 41.)

"But this question is broader than the mere cost of service. It embraces the whole situation, in which the cost of service is but a single factor." (Rec., 41.)

"We do not believe that these carriers should be allowed to add an arbitrary charge to the Chicago rate for doing a thing which they for thirty years have said was included in that rate, and which we believe, considering the manner in which rates are made up and in which this rate has been made up, ought to be included in the rate." (Rec., 43.)

"To remove all doubt upon that subject, however, if it is not clearly found, we now find, that in looking entirely to the cost of service, and including as a part of that cost the trackage charge paid the Union Stock Yards and Transit Company and the unloading charge paid that same company, the amount of this terminal if, under the circumstances of this case, it is proper to impose the charge, is reasonable. If any modification of the present findings is necessary, they are hereby modified to that extent.

That finding must, however, be carefully read in connection with the other facts in the case, and the conclusion of the Commission that the imposition of this terminal charge is unreasonable. The defendants say it was admitted that this charge was reasonable, 'provided any charge could be legally made for the terminal service.' The intimation of the Commission was, as indicated in the above extracts from the record, 'that if this charge was proper to be imposed, it was a reasonable charge.' The reason for the conclusion of the Commission is to be found in the distinction between these two statements. What the Commission passed upon finally was, not whether a terminal charge of this sort could be legally made,—that had been already determined by the courts,—but whether this particular charge could be properly imposed under the circumstances of this case." (Rec., 49.)

"We have found that to the extent of $1, a new condition did justify the additional charge for the reason that then, for the first time, the Stock Yards Company exacted this trackage charge. In other words, the cost of service to the defendants was

increased by just $1 on that day. It must follow, therefore, as a necessary conclusion, that of the increase which the defendants made, $1 was justifiable and $1 was unjustifiable. This is not, however, because $2 is an unreasonable charge for transporting a car to the stock yards, if that service was performed by some independent agency, *but because since the defendants were already receiving compensation for this service, they ought not to charge for it the second time. Of this proposition we have no doubt.*" (Rec., 50.)

"This decision of the Circuit Court of Appeals the Commission accepts. It assumes that, as a legal proposition the carrier may make a charge of the sort which it attempts to make in this case, but it holds, as a matter of fact, that it is unreasonable to impose this terminal charge *for the reason that the rate to Chicago already includes that charge.* The Circuit Court of Appeals says that the carrier may segregate its rate, charging one part to a certain point and another part beyond that point, but there is a wide difference between segregation and addition. *What the carriers have done here is to add an arbitrary sum for a service for which they are already receiving a reasonable compensation.*" (Rec., 51.)

These quotations amply show that the the Commission proceeded on the two theories indicated above as their fundamental lines of argument.

5. While the flat or ordinary Chicago rate is, from a large part of the territory consigning live stock to Chicago, a joint rate, made and shared by the respective appellees with numerous other carriers originally made defendants in the proceeding before the Commission, the terminal charge is made and enjoyed solely by the appellee companies, which alone do the terminal service. (Rec., 19, 24.) The carriers which share in the joint Chicago rate, but do not participate in the terminal work or in the terminal charge, were dismissed from the proceeding by the Commission; and the orders of the Commission, here

sought to be enforced, are directed only to appellees, being the terminal carriers.

6. Admittedly the appellees have not conformed to the orders of the Commission, which the courts are now asked to enforce, but have been collecting the terminal charge continuously since its establishment, June 1, 1894.

GENERAL STATEMENT OF APPELLEES' POINTS.

Our argument will fall under the following general heads:

I. The Interstate Commerce Commission had no jurisdiction to make the orders here sought to be enforced, for the reason that such orders are attempts on the part of the Commission to make maximum rates for the appellees.

II. The tariffs put into effect on June 1, 1894, and since maintained, conclusively overthrow the contention that the $2 charge established by those tariffs is a second charge imposed for a service which appellees had agreed to perform for the ordinary Chicago rate; and, indeed, the orders of the Commission are themselves inconsistent with that contention.

III. The terminal or switching charge established by the tariffs in force since June 1, 1894, is for the service of carrying live stock to the Stock Yards over the tracks of the Stock Yards Company (and in the case of the Great Western, the Burlington, the Milwaukee and St. Paul, and the Atchison Companies over the tracks, also, of other railroads intermediate between such appellees' own tracks and the Stock Yards Company's tracks) and of delivering at the Stock Yards, from two to nine miles away from appellees' own tracks; while the ordinary Chicago rate has applied since June 1, 1894, only to transportation upon appellees' own railroads, without the further service of carriage to and delivery at the Stock Yards.

This establishment of distinct charges for wholly different services—on the one hand, of ordinary transportation on appellees' own roads; and, on the other hand, of carrying off appellees' own roads to the Stock Yards and making delivery there—was reasonable and lawful under the cir-

cumstances of the case, and has many substantial advantages, both to the appellees and to the public.

IV. A proceeding such as this, under section 16 of the Interstate Commerce Act, calls upon the Federal Courts to exercise their independent judgment upon the facts as well as the law of the case; and the conclusions of the Commission upon questions of fact must be rejected by the courts if such conclusions contravene rules of legal inference from admitted or established facts, or if such conclusions appear to the courts to be against the preponderance of evidence. The facts by which the Commission's conclusions of fact are to be tested may of course be furnished either by the Commission's own findings or by extraneous evidence introduced on the hearing in court.

V. Only the $2 charge,—and not the general Chicago rate,—was the subject of complaint before the Commission, or was investigated by the Commission, or is the basis of the Commission's orders here sought to be enforced. No question concerning the general Chicago rate is involved in this proceeding; and if the terminal charge is itself lawful, the Circuit Court was right in dismissing this proceeding, and its action must be affirmed by this court, without any consideration of the propriety of the general Chicago rate.

VI. The $2 terminal charge is shown by the Commission's own findings to be less than the actual cost of the terminal service for which it is charged, and therefore is conclusively proved to be reasonable.

VII. No claim can be made that the terminal charge constitutes an undue prejudice against Chicago because the Commission has itself found that it is not, unless it is unreasonable, (and therefore the case reduces to a question whether the amount of the terminal charge is too great

for the service for which it is charged); and because the Commission's orders, here sought to be enforced, condemn the terminal charge absolutely, as unreasonable, and not as a discrimination.

The facts found by the Commission would show (if the question were here involved) that the terminal charge actually works no undue prejudice to Chicago.

VIII. The Interstate Commerce Commission is not empowered to administer the Anti-Trust Act, and therefore the courts cannot administer that Act in proceedings under section 16 of the Interstate Commerce Law to enforce the Commission's orders. Nor is any violation of the Anti-Trust Act claimed in the petitions to the Interstate Commerce Commission, in which this controversy originated, or found by the Commission to have occurred, or shown by any facts in the record to exist. Further, if the terminal charge had been established by an arrangement between appellees in illegal restraint of competition, that would be no reason for reducing the amount of the charge, if $2 is not an unreasonable amount.

IX. The Circuit Court ruled correctly in its exclusion of evidence at the hearing below.

X. Neither the Circuit Court nor this court has jurisdiction in a proceeding like the present to modify the orders of the Commission sought to be enforced. The only question which such a proceeding brings before the courts is whether the orders of the Commission should be enforced as made by the Commission.

ARGUMENT.

I.

THE INTERSTATE COMMERCE COMMISSION HAD NO JURISTION TO MAKE THE ORDERS HERE SOUGHT TO BE ENFORCED, FOR THE REASON THAT SUCH ORDERS ARE ATTEMPTS ON THE PART OF THE COMMISSION TO PRESCRIBE MAXIMUM RATES FOR APPELLEES.

1. It is now settled that the Commission has no power to prescribe railroad rates—whether maximum, minimum or absolute—for the future.

Interstate Commerce Commission v. *Cincinnati, New Orleans & Texas Pacific Railway Company*, 167 U. S., 479.

Interstate Commerce Commission v. *Alabama Midland Railway Company*, 168 U. S., 144.

Cincinnati, New Orleans & Texas Pacific Railway Company v. *Interstate Commerce Commission*, 162 U. S., 184.

This is true whether the Commission proceeds upon its own initiative, or attempts the prescription of rates in an order made upon complaint to it. Thus this court says:

> "That Congress has not conferred upon the Interstate Commerce Commission the legislative power of prescribing rates, either maximum or minimum or absolute; and that, as it did not give the express power to the Commission, it did not intend to secure the same result indirectly by empowering that tribunal, after having determined what, in reference to the past, were reasonable and just rates, to obtain from the courts a peremptory order that in the future railroad companies should follow the rates thus determined to have been in the past reasonable and just." (168 U. S., 161, 162.)

2. The orders of the Commission involved in this proceeding are attempts by the Commission to prescribe the maximum charge of appellees for the terminal service of transporting live stock to the Union Stock Yards. The order of January 20, 1898 (which the second order merely reiterates), should here be quoted:

> "It is ordered and adjudged that the report and opinion of the Commission on file herein be, and the same is hereby, made a part of this order. That the defendants, the Atchison, Topeka and Santa Fe Railway Company, the Chicago, Rock Island and Pacific Railway Company, the Chicago and Alton Railroad Company; the Chicago, Burlington and Quincy Railroad Company, the Chicago and North Western Railway Company, the Chicago, Milwaukee and St. Paul Railway Company, the Chicago Great Western Railway Company, the Illinois Central Railroad Company and the Wabash Railroad Company be, and they severally are, hereby notified and required to *cease and desist, on or before the 1st day of April* 1898, *from charging, demanding, collecting or receiving (in addition to their regularly published transportation charges) the sum of $2 per carload of live stock as compensation for terminal services rendered in making delivery of live stock at the stock yards of the Union Stock Yards & Transit Company* in the City of Chicago, State of Illinois, which said charge is found and held in and by said report and opinion of the Commission to be unreasonable, unjust and unlawful. That said defendants be, and they severally *are, hereby recommended not to charge, demand, collect, or receive in excess of $1 per carload as compensation for terminal or switching services rendered in the delivery of live stock at the yards of the Union Stock Yards & Transit Company* in said City of Chicago, which said sum of one dollar per carload as compensation for such terminal or switching services is found and declared in and by said report and opinion to be just, reasonable and lawful." (Rec., 46, 47.)

If this order, instead of "recommending" that no more than $1 be charged for the terminal service, commanded that course, it would need no argument to show that it

was an attempt to prescribe the maximum rate of $1 for the future, and so beyond the Commission's powers. So much the Commission itself admits, as will appear from its following explanation of the vagaries of its order:—

> "Our judgment is, therefore, that the exaction of a terminal charge of more than $1 per car is in violation of the first and possibly of the third section of the act, and that the defendants ought not to exact more than this sum. To order them not to do so would, however, be prescribing a rate for the future, and that, under the decision of the United States Supreme Court in *Interstate Commerce Commission* v. *Cincinnati, N. O. & T. P. R. Co.*, 167 U. S., 479; 42 L. Ed., 243, we have no power to do. We shall make an order directing the carriers to cease and desist from charging and collecting the present charge of $2. The Supreme Court in the case above referred to bases its decision upon the ground that the Interstate Commerce act does not in express terms delegate to the Commission the power to prescribe a rate. It is intimated in that case that the power of Congress to do so, had it elected, was ample. Now, the fifteenth section of the act to regulate commerce does in express terms provide that the Commission shall, upon finding a carrier in violation of any of the provisions of that act, order it to cease and desist therefrom. If this is equivalent to prescribing a rate for the future, it is within the express terms of the act itself, and therefore not open to the objection that the power has not been delegated. *What the practical effect of such an order may be, or whether it can be given any practical effect, remains to be seen.*" (Rec., 44.)

The substantial character of the order as a prescription of a maximum charge has not been altered, however, by first commanding that appellees "cease and desist from charging, collecting, demanding or receiving (in addition to their regularly published transportation charges) the sum of $2 per carload of live stock, as compensation for terminal services," and then merely "recommending" a $1 charge. Without this recommendation it might be claimed, perhaps, that the order means that no terminal charge what-

ever shall be made—on the theory, upon which the Commission repeatedly falls back in its opinion that the ordinary Chicago rate, in spite of the contrary declaration of the tariffs put in effect June 1, 1894, and ever since maintained, pays for transportation all the way to the Stock Yards, and that any terminal charge, however small in amount, is consequently a second charge laid for a service already paid for by the ordinary Chicago rate. If the order would bear such interpretation (*i. e.*, as forbidding any terminal charge whatever), it might not be open to the present jurisdictional objection, however erroneous for other reasons; because, in that event, it would not be a direction concerning the amount of future charge, but only a prohibition of (supposed) double charging for the same service.

But the order is actually directed against the amount of terminal charge—not against the mere fact of making any terminal charge, however small; and it prescribes that appellees, while allowed to make some terminal charge, must not charge as much as $2. This appears conclusively from the "recommendation" (which, of course, is permission) of a $1 charge. In view of this permission to charge $1, it is impossible to say that the order is anything else than a prohibition of a greater charge than $1; and so the order is, purely and simply, an attempt to prescribe a maximum charge for the terminal service.

3. Even the language of the Commission's order in this case is identical with the language of the Commission's order in the Cincinnati, New Orleans and Texas Pacific case, as found in 167 U. S., 481, 482. Let us quote the latter order, so far as here pertinent:

> "It is ordered and adjudged that the above named defendants, and each of them, engaged or partici-

> pating in the transportation of freight articles enumerated in the Southern Railway and Steamship Association classification as articles of the first, second, third, fourth, fifth or sixth class, do, from and after the 10th day of July, 1894, wholly cease and desist and thenceforth abstain from charging, demanding, collecting or receiving any greater aggregate rate or compensation per hundred pounds for the transportation of freight in any such class from Cincinnati, in the State of Ohio, or from Chicago, in the State of Illinois, to [various places named] than is below specified in cents per hundred pounds under said numbered classes respectively and set opposite to said points of destination—that is to say [then follows a schedule of places and figures]."

Wherein lies the difference between ordering appellees to desist from "charging the sum of $2.00 per car load," *i. e.*, as much as $2.00, and ordering the Cincinnati, New Orleans and Texas Pacific Company to desist from charging "any greater aggregate rate or compensation" than certain specified figures? If the latter order prescribes a maximum rate, why does not the former order do the same?

The orders of the Commission in this case mean exactly the same as if they read that appellees should not hereafter "charge more than $1 for the terminal service."

The Commission seems to ascribe some magical effect to the provisions of Section 15, that the Commission may order carriers to "cease and desist" from a course of unlawful conduct. These words, however, were in the Interstate Commerce Act when this court decided the cases in 167 and 168 U. S.; and the Commission's argument simply amounts to a criticism of this court's conclusion as to the Commission's powers. Counsel for the Commission relied upon these words of Section 15 in their argument of the Texas Pacific case (page 485); and these words were noticed, too, by the court itself (page 509). The application of Section 15 is to cases where the Commission is

given jurisdiction over the particular subject-matter, and the section merely regulates the procedure in such cases. As this court itself said, of this very section regarding procedure:

> "It will never do to make a provision prescribing the mode and manner applicable to all investigations and all actions equivalent to a grant of power in reference to some specific matter not otherwise conferred." (page 510.)

4. It is not to be overlooked that the prohibition under the Commission's orders against charging as much as $2.00 for the terminal service is absolute and unqualified. The orders forbid such charge—not merely so long as the flat Chicago rate is not reduced from what it was at the time of making the orders, nor so long as the rates to other live stock markets, like Omaha or Kansas City, are not raised, nor even so long as a similar terminal charge is not made at other live stock markets—but under any circumstances. The Commission's orders are not therefore a mere prohibition of an alleged discrimination (which would cease to be such if the Chicago general rate should be sufficiently reduced at any time, or if the rates to other live stock markets should at any time be sufficiently raised, or if a like terminal charge should at any time be imposed at other live stock markets); but these orders are an attempt to regulate the amount of the terminal charge by itself, and independently of any other circumstances, on the ground that the terminal charge is inherently too large. While the Commission may possess power to forbid a discrimination, that is not what it has sought to do in this case; for its orders would then have provided only that the terminal charge should not exceed $1 so long as the Chicago rates were not reduced, and the rates to other live stock markets were not raised, and a like terminal charge was not imposed at other live stock markets (such as Omaha

or Kansas City). If the trouble with the Chicago terminal charge were that it constituted a discrimination, the Commission's orders would be fatally erroneous for not giving appellees the option now or at any time hereafter to remove the discrimination—while continuing the terminal charge—by reducing the general Chicago rate, or by raising the rate to other live stock markets, or by imposing a similar terminal charge at other live stock markets.

The reason why the Commission's orders are absolute, and forbid the terminal charge unqualifiedly, is obviously that (as shown in the quotations in the preceding "Statement of Facts" from the Commission's findings) the Commission found the terminal charge not discriminatory except for the reason of its supposed inherent unreasonableness, and only to the extent of such unreasonableness, viz., $1.

The orders of the Commission thus palpably prescribe a future maximum rate (independent of changing circumstances) for the terminal service; and as such they are both literally and substantially such orders as this court held, in the cases cited from 167 and 168 U. S., to be beyond the Commission's power.

5. The fact that the order finds the terminal rate unreasonable to the extent of $1 and provides for further proceedings with a view to reparation will, of course, not suffice to justify the present proceedings in the courts, for the Commission cannot ask the courts to enforce its orders except as those orders may have been already violated. No reparation having yet been directed by the Commission, there has been no disobedience to any order of the Commission, except in the fact that appellees have declined to reduce the terminal charge. Indeed, there is as

yet no order of the Commission for the courts to enforce except the direction that appellees discontinue charging as much as $2 for the terminal service.

II.

THE TARIFFS PUT INTO EFFECT ON JUNE FIRST, 1894, AND SINCE MAINTAINED, CONCLUSIVELY OVERTHROW THE CONTENTION THAT THE $2 CHARGE, ESTABLISHED BY THOSE TARIFFS, IS A SECOND CHARGE IMPOSED FOR SERVICES WHICH APPELLEES HAD AGREED TO PERFORM FOR THE ORDINARY CHICAGO RATE; AND, INDEED, THE ORDERS OF THE COMMISSION HEREIN ARE THEMSELVES INCONSISTENT WITH THAT CONTENTION.

This question of double charging is wholly dependent upon the actual contract made between appellees and their shippers. It is entirely apart from any question of the reasonableness of appellees' charges. The terminal charge is not laid for a service for which appellees have already otherwise charged, unless appellees have agreed for a sum other than the terminal charge (*i. e.*, for the ordinary Chicago rate) to do the same service of carrying to and delivering at the Stock Yards for which the terminal charge itself is made. The question, therefore, depends upon appellees' tariffs, which have been effective since June 1, 1894. Have appellees in those tariffs offered to carry live stock to the Union Stock Yards and there deliver it for the ordinary Chicago rate; or have they, on the contrary, distinctly said that they would not carry live stock to the Union Stock Yards and there deliver it for the ordinary Chicago rate, and that this latter rate is applicable only to carriage and delivery of live stock on their own railroads in Chicago, without the additional service of carriage to the Stock Yards and delivery there?

1. The tariffs are explicit, and the construction of these written instruments is a question of law.

The Atchison Company's tariff, quoted and considered by the Court of Appeals in the *Walker* v. *Keenan* case (73 Fed. Rep., 755, 757), is a fair sample of all, and reads as follows:—

> "On and after July 9, 1894, a terminal charge of $2 per car will be made in addition to the Chicago rates, as shown in the tariffs of the Western Freight Association on live stock and other freight received from or delivered to the Stock Yards, or industries located on the tracks of the Union Stock Yards Railway or the Indiana State Line Railway; and $3 per car on shipments received from or delivered to the Northern Indiana Railroad at Hammond."

Others of the Atchison Company's tariffs, promulgated at different times to the same effect, will be found in Record, pages 198, 199, 205, 206.

The first of the North-Western Company's tariffs reads as follows:—

> "Taking effect June 1, 1894, the tariffs on live stock and all other traffic received from and delivered to the Union Stock Yards, and all industries located on the tracks of the Union Stock Yards Railway, the Indiana State Line Railway or the Northern Indiana Railroad at Hammond, Ind., will, in addition to the rates named to or from Chicago, be subject to a terminal chage of $2 per car.
>
> This charge must in all cases be added to the through rate, and must be shown separately on the way-bill as miscellaneous earnings and a delivering expense; it must also be provided for and shown in contracts and bills of lading." (Rec., 196.)

All the other tariffs are to the same general effect. They vary immaterially in wording, and only enough to illustrate that they are ordinary business instruments, written by business men in a popular way, and not by lawyers, and are entitled accordingly to common sense treatment.

What is the fundamental thing that these tariffs declare? Unmistakably, that after their promulgation appellees would not carry live stock to the Union Stock Yards and deliver it there for the ordinary Chicago rate, but would insist upon $2 more than the Chicago rate, as a charge for the service of carrying the live stock over the Stock Yards tracks and delivering it at the Stock Yards. Popular, untechnical language could not make the matter clearer. Appellees distinctly said by these tariffs that they would charge $2 more than the ordinary Chicago rate for carriage to and delivery at the Stock Yards; and that is the same thing as saying that they would not thereafter carry to and deliver at the Stock Yards for the ordinary Chicago rate alone.

2. These tariffs, in force since June 1, 1894, alter the whole situation radically from what it was before that date. It may be admitted that before these tariffs went into effect appellees did, in fact, deliver live stock at the Stock Yards for the ordinary Chicago rate; but the whole purpose of the new tariffs put into effect June 1, 1894, was to alter that situation. The Commission has insisted upon looking at things as they were before the tariffs; while the questions in this case concern the time since the tariffs. Here lies the Commission's root trouble; and it is unnecessary to argue that the construction and effect of the written tariffs is matter of law, on which any view of the Commission would be subject to revision by the courts.

3. The Commission's own order is inconsistent with the theory of double charging, and rests unavoidably upon the fact that after June 1, 1894, the ordinary Chicago rate no longer paid for transportation to and delivery at the Stock Yards. The Commission, as has been already seen, allow appellees to make a charge of "$1 per carload as compensation for terminal or switching services rendered in the de-

livery of live stock at the yards of the Union Stock Yards and Transit Company" (Rec., 47); whereas no charge whatever could be made for these terminal or switching services if, in spite of the tariffs adopted June 1, 1894, the ordinary Chicago rate itself paid for such services. It results, therefore, from the very nature of the Commission's own order, that it is not open to appellant to dispute the fact that no part of the terminal or switching services, rendered beyond appellees' own rails, in getting live stock to the Stock Yards and there delivering it, is paid for by the ordinary Chicago rate.

4. While the views of the Circuit Court and of the Court of Appeals have no conclusiveness here, the interpretation of the tariffs by those courts is certainly weighty in support of the idea that the tariffs did what, undoubtedly, they were meant to do, viz., declare to the public that after their adoption the ordinary Chicago rate would not apply to transportation beyond appellees' own roads to the Stock Yards.

Not only did both the Circuit Court and the Court of Appeals in terms construe the tariffs as forbidding the claim of double charging, but such was the necessary ground of their decisions, for otherwise no terminal charge of any amount could be proper.

III.

THE TERMINAL OR SWITCHING CHARGE ESTABLISHED BY THE TARIFFS IN FORCE SINCE JUNE 1, 1894, IS FOR THE SERVICE OF CARRYING LIVE STOCK TO THE STOCK YARDS OVER THE TRACKS OF THE STOCK YARDS COMPANY (AND IN THE CASE OF THE GREAT WESTERN, THE BURLINGTON, THE MILWAUKEE AND ST. PAUL, AND THE ATCHISON COMPANIES OVER THE TRACKS ALSO OF OTHER RAILROADS INTERMEDIATE BETWEEN SUCH APPELLEES' OWN TRACKS AND THE STOCK YARDS COMPANY'S TRACKS) AND OF DELIVERING AT THE STOCK YARDS, FROM TWO TO NINE MILES AWAY FROM APPELLEES' OWN TRACKS; WHILE THE ORDINARY CHICAGO RATE HAS APPLIED, SINCE JUNE 1, 1894, ONLY TO TRANSPORTATION UPON APPELLEES' OWN RAILROADS, WITHOUT THE FURTHER SERVICE OF CARRIAGE TO AND DELIVERY AT THE STOCK YARDS.

THIS ESTABLISHMENT OF DISTINCT CHARGES FOR WHOLLY DIFFERENT SERVICES—ON THE ONE HAND, OF ORDINARY TRANSPORTATION ON APPELLEES' OWN ROADS; AND, ON THE OTHER HAND, OF CARRYING OFF APPELLEES' ROADS, TO THE STOCK YARDS, AND MAKING DELIVERY THERE—WAS REASONABLE AND LAWFUL UNDER THE CIRCUMSTANCES OF THE CASE, AND HAS MANY SUBSTANTIAL ADVANTAGES, BOTH TO APPELLEES AND TO THE PUBLIC.

Under this general head should be considered:

First. The meaning of appellees' tariffs, with reference to the question for what services the terminal or switching charge is made.

Second. The general right of a railway carrier, in view especially of the Interstate Commerce Act, to make a separate charge for a distinct, special service, instead of making a single, aggregated charge for the total of all its services.

Third. The propriety of a distinct charge for the special service of carrying live stock to the Union Stock Yards and there delivering it, under the particular circumstances of this case.

First. The two dollar charge is made under the appellees' tariffs for the special service of carrying from appellees' own roads to the Union Stock Yards, and there making delivery.

1. The immediate historical occasion of the $2 charge indicates that it applies to the service beyond the junction point of appellees' own rails with the rails of other companies running to the Stock Yards, It is quite correct that this $2 charge was first established when in June, 1894, the Union Stock Yards Company first imposed a trackage charge varying from eighty cents to $1.50 per car (beside its previous and still continued unloading charge of twenty-five cents per car); and this trackage charge was for the use by appellees of the rails of the Stock Yards Company running from their junction points with appellees' roads to the Stock Yards. Initially, therefore, we should expect the $2 charge to relate to the same distance.

2. The $2 charge is variously called in the tariffs a "terminal charge" (*e. g.*, Rec., 195, 198, 207, 208, 213, 214) or a "delivering expense" (Rec., 196, 198, 213, 214); but the ever-present statement is that the charge is to be collected on live stock going to the Stock Yards, and not to be collected on live stock which does not go there. Accordingly, the charge is laid for the peculiar service of getting to the Stock Yards, which is not involved if the stock does not go there; *i. e.*, for the service over the rails of other companies from their junction with appellees' own railroads.

3. The Commission recognizes and decides that the $2 charge is laid for the service beyond the point of leaving the appellees' own roads.

(*a*) Otherwise, the Commission's elaborate inquiry concerning the cost of hauling from the junction points with appellees' railroads to the Stock Yards would have been irrelevant. (Rec., 25–27.)

(*b*) The charge is compared by the Commission with other switching charges, thus—

> "If the charge for this terminal service is to be regulated by what is ordinarily charged for switching, the present charge is a reasonable one. The testimony showed that it seldom happened that a lower switching charge than $2 was made, and that this amount was often exceeded." (Rec., 27.)

(*c*) The Commission's ultimate finding that the charge is reasonable in amount recognizes it as being for the terminal service from the point of leaving appellees' own roads; this finding being—

> "To remove all doubt upon that subject, however, if it is not clearly found, we now find that looking entirely to the cost of service and including as a part of that cost the trackage charge paid to the Union Stock Yards and Transit Company and the unloading charge paid that same company, the amount of this terminal, if under the circumstances of this case it is proper to impose the charge, is reasonable." (Rec., 49.)

This shows that the Commission treated the charge as laid for both the hauling and the delivery services after leaving appellees' roads.

(*d*) The "recommendation," in the Commission's order, that appellees make a terminal charge of $1, instead of $2, was based upon the Commission's idea that the appellees might properly reimburse themselves for the trackage charge, of varying amounts from 80 cents to $1.50 per car, imposed by the Stock Yards Company. Thus the Commission said—

"They may reimburse themselves for whatever they are compelled to actually disburse in the way of trackage charges to the Union Stock Yards and Transit Company. That company is, apparently, entirely independent of the railway companies. They cannot and do not in any respect control its charges. This particular charge seems to have been exacted from them in opposition to the most earnest protest. It does not seem just, therefore, to compel them to absorb this charge." (Rec., 43.)

Again, the Commission said—

"We have found that to the extent of $1 a new condition did justify the additional charge, for the reason that then for the first time the Stock Yards Company exacted this trackage charge." (Rec., 50.)

This new trackage charge of the Stock Yards Company, however, could not justify, *pro tanto*, appellees' terminal charge of $2, unless the trackage charge constituted an expense which appellees' $2 charge was laid, among other purposes, to cover.

(*e*) The statements quoted in the last paragraph show that the recommendation in the Commission's order, that appellees make a $1 terminal or switching charge, involves a recognition and finding on the part of the Commission that the $2 charge was established by appellees in order to obtain compensation for the labor and expense of the service of getting live stock to the Stock Yards after its departure from appellees' own roads and of delivering stock at the Stock Yards.

4. The views of the Circuit Court and of the Court of Appeals agreed with the finding of the Commission on this point that the $2 charge made by appellees' tariffs since June 1, 1894, is for the service of of transporting live stock to the Stock Yards over the tracks of the Union Stock Yards Company and of other companies, after leaving appellees' own tracks, and of then delivering the live stock to the Union Stock Yards.

In the Keenan case (73 Fed. Rep., 755), the court said by Judge SHOWALTER, concerning the shipments from Kansas City there involved—

> "The 23½ cents per hundred weight (being the ordinary Chicago rate in that case) pays these appellants for hauling from Kansas City to a station or point on their line in Chicago; the $2 per car pays for the transfer thence to the Stock Yards, where the consignees desire the delivery to be made." (p. 762.)

In the Circuit Court Judge KOHLSAAT held, likewise, that appellees effected

> "A segregation of their freight charges from Missouri river and other stock shipping centers to the Chicago Stock Yards, so that the Chicago rate did not include the expenses or charges incurred in the delivery at the Stock Yards from tracks of the defendants, and did make a special rate from their tracks to the Stock Yards."

This quotation will be found accurately to state Judge Kohlsaat's position. (Rec., 252, 253.)

Second. A railway carrier, in the absence of statutory prohibition, is entitled to make a separate charge for a distinct, special service, instead of making a single aggregated charge for the total of all its services. The limitation upon this privilege, doubtless, is that the subdivision of charges shall not go to the length of unreasonableness. The Interstate Commerce Act recognizes and confirms this right of apportioning separate charges to different services.

1. At the outset it should be noticed that the Commission does not question the right of appellees to make a separate charge for the special service of getting to the Stock Yards and there delivering. On the contrary, it allows $1 for this service. Nor have the Commission's attorneys attacked the general right of making a distinct charge for a special and peculiar service. The idea and

claim of the Commission and its attorneys are merely that because appellees made no charge before June 1, 1894, they ought not now to charge more than $1. Apology is, perhaps, due for going into a discussion of the question when such is the Commission's attitude.

2. The right to make separate items of charge for separate items of service must certainly be admitted to exist, when there is nothing unreasonable in the subdivision, and when no statute forbids it. If the subdivision of services and charges should become so minute or so arbitrary in any instance as to be unreasonable, it would doubtless be violative of the general requirement made concerning carriers, in the interest of the public welfare, that their conduct, and particularly their charges shall be reasonable. But this very limit which the law would doubtless put upon the action of a carrier in the way of itemizing its charges for different portions of its service affords the best reason in the world why the privilege of itemized charging, which the rest of the world possesses; and which, undeniably, is promotive of fair charging and of good undertsanding and feeling about charges, should not be denied to carriers; for any possibility of abuse in the practice, through carrying it too far, is removed by the law's inhibition of unreasonableness in a carrier's methods.

This court, speaking by Mr. Justice BREWER, in a case under the Interstate Commerce Act, adopted with approval the following language of Mr. Justice JACKSON:

> "Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate, so as to give undue preference or disadvantage to persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers as they were at the common law, free to make special contracts looking to the increase of their business, to classify their

> traffic, *to adjust and apportion their rates* so as to meet the necessities of commerce, and *generally to manage their important interests upon the same principles which are regarded as sound, and adopted in other trades and pursuits.*"
>
> *Interstate Commerce Commission* v. *C. N. O. & T. P. Ry. Co.*, 167 U. S., 479, 493.

These words are most apposite to the point now in hand. The present case illustrates their wisdom. There are reasons in abundance why the special service of getting live stock to the Union Stock Yards should be the subject of a separate charge, and these reasons will later be suggested. In the present connection it should be said that no principle is regarded as more sound or is adopted with better results "in other trades and pursuits" than that of itemized charging in the interest of definiteness, honesty, good understanding and good feeling; that there is every reason for extending that principle, within reasonable limits, to the business of a railway carrier; and that any danger of abuse of the principle is obviated as to the business of a railway carrier, by the established rule that the conduct and charges of such a carrier must be reasonable, and not oppressive.

3. There is no novelty in distinct charges for special parts of a railway's services. They have long been common, both in this country and in England. It is enough to refer to "bridge charges," "ferry charges" and "switching charges," as extensive and important types of such charges in the United States.

Take the St. Louis bridge, for example, which we understand to be owned by a distinct corporation, which charges tolls for use of the bridge by the railroads connecting with it. Would anybody contend that a railway company receiving freight at some shipping point in the region west of the Mississippi river for delivery at East St. Louis (on

the east side of the Mississippi river), could not by proper statements in its tariff so far itemize its charges on the stated shipment as to make a "flat St. Louis rate" and a separate charge for taking the shipment across the bridge and delivering it in East St. Louis, provided the charges were of reasonable amount? The bridge charge in this case would be merely reimbursement to the railway company for the trackage charge it would have to pay the bridge company and for the cost of the service on the bridge, with the addition of a fair profit. Bridge charges like these are made, and always have been made, throughout the United States; they are undistinguishable from the $2 charge made in the present case and if appellees' $2 charge cannot be sustained, "bridge charges" over the whole country will likewise fall.

Consider for a moment, also, the case of "switching charges," which are about as well-known and thoroughly established as anything in American railroading. They are likewise separate charges; and they are laid for the special service of carrying freight to special delivery points where the consignee may desire it delivered for any one of a hundred different reasons, such as the location of his factory there, or the existence at that point of a side-track convenient for the consignee's use, or the abliity of another railway company to get the freight at such point. "Switching charges" are quite as often made by the company which has hauled the freight to the place where the special service begins for which the "switching charge" is made, as they are by a second company which does only the special service. The identity or difference of company can, of course, make no difference, if the other circumstances are alike. The delivery service for which "switching charges" are laid often involves a haul over two or three or more miles of track. They are in every respect like the service for which appellees make their $2 charge;

with the single exception, which makes the case for this $2 charge even stronger, that the appellees have no proprietary interest in or control over the tracks which they use in getting live stock to the Stock Yards, and traverse those tracks merely under an individual car license. Is the system of "switching charges" also to be abolished, if appellees' $2 charge is unlawful, on the theory that it should have been included in a single aggregate rate, instead of being made a distinct charge for a definite and special service?

In England the system of separate items of charge for different parts of a railway company's services is carried to great length, and has always been deemed of the utmost public advantage.

(1) Separate charges are not only made, but are prescribed by statutes, for the mere use of the railway as a highway (the cars and locomotive service being supplied by the shipper himself); for the use of cars; and for the locomotive or hauling service. The system contemplates an opportunity to the shipping public to take one or more of these three services at the hands of the railway company, according to the shipper's interest. The three stated elements of an ordinary transportation constitutes what in the English statutes is termed "conveyance"; and besides these three charges there are other separate charges for such services as the railway company may do in the character of "carrier," as distinguished from mere "conveyor." The subject has its final and authoritative general exposition in the case of

Hall & Co. v. *London, Brighton & South Coast Railway Company*, 5 Browne & MacNamara's Railway and Canal Traffic Cases, 28.

The statute pertaining to the London, Brighton and

South Coast Railway Company (26 and 27 Vict., Ch. 218), considered in the case just cited, will be found at length in

1 Hodges' Law of Railways (7th Ed.), 456, 459.

After prescribing separate rates for the separate elements of a conveyance, in accordance with the general system just described, Section 51 places a limit upon the total of such three kinds of charge, in the event that the railway does the entire conveying; and this section reads as follows:

> "The maximum rates of charges to be made by the company for the conveying of animals and goods, including the tolls for the use of their railways or waggons or trucks and for locomotive power, and every other expense incidental to such conveyance, (*except a reasonable sum for loading, covering and unloading of goods at any terminal station of such goods, and for delivery and collection, and other services incidental to the duty or business of a carrier, where such services or any of them are or is performed by the company*), shall not exceed the following sums, that is to say:"

The italicized clauses, in parenthesis, are the portion concerning services other than conveyance; and in the Hall case these clauses were held to include, *prima facie* (and subject to determination on the particular facts of each case), "station accommodation, the use of sidings, weighing, checking, cartage, watching and labelling," so that, of course, separate charges could be made for any of these. The Hall case did not determine these to be the only extra services, but simply answered an inquiry of the Railway Commission concerning the stated services.

The English "Model Railway Bill" is a general form prescribed by statute for bills offered in Parliament for enactment; and, as amended in 1888, this form of bill is found in

2 *Hodges on Railways*, 438–451.

This bill form is nearly identical in wording with the old London, Brighton and South Coast Company's act and is equivalent in substance; continuing, therefore, to the present time, in a general way, the same policy about separate charges.

(2) Another English statute of much significance is:

Regulation of Railways Act, 1868 (31 *and* 32 *Vict., Ch.* 119), *Section* 16.

It is there provided that in case of use of any steam vessel owned by the railway company for carriage over any part of the railway company's route

> "Where an aggregate sum is charged by the company for conveyance of a passenger by a steam vessel and on the railway, the ticket shall have the amount of toll charged for conveyance by the steam vessel distinguished from the amount charged for conveyance on the railway."

This is an instance of subdivision of charges for different geographical parts of a continuous carriage when the vehicle is changed.

(3) The policy of England is most emphaticaly apparent in the statutory provisions which have existed now for perhaps forty years, entitling any shipper, in case the railway company does not itself voluntarily itemize its different charges, to require such itemization. The chief examples of these statutes follow:

The Regulations of Railways Act of 1868 (31 *and* 32 *Vict., Ch.* 119), *Section* 17; *found in* 2 *Hodges on Railways*, 281.

This section reads:

> "Where any charge shall have been made by a company in respect of conveyance of goods over their railway on application in writing within one week after the payment of the said charge made to the secretary of the company by the person by whom or

on whose account the same has been paid, the company shall within fourteen days render an account to the persons so applying for the same, distinguishing how much of the said charge is for the conveyance of the said goods on the railway, including therein tolls for the use of the railway, for the use of carriages and for locomotive power, and how much of such charge is for loading and unloading, covering, collection, delivery and for other expenses, but without particularizing the several items of which the last mentioned portion of the charge may consist."

The next similar enactment is:

Regulation of Railways Act, 1873 (36 *and* 37 *Vict., Ch.* 48), *Section* 14; *found in* 2 *Hodges on Railways*, 309, 310.

This reads:

"The commissioners may from time to time on the application of any person interested make orders with respect to any particular description of traffic, requiring a railway company or canal company to distinguish in such book how much of each rate is for the conveyance of the traffic on the railway or canal, including therein tolls for the use of the railway or canal, for the use of carriages or vessels, or for locomotive power, and how much is for other expenses, specifying the nature and the detail of such other expenses."

The latest statute on the subject is:

Railway and Canal Traffic Act, 1888 (51 *and* 52 *Vict., Ch.* 25), *Section* 33, *clause* 3; *found in* 2 *Hodges on Railways*, 357.

This reads:

"The company shall within one week after application in writing made to the secretary of any railway company by any person interested in the carriage of any merchandise which has been or is intended to be carried over the railway of such company, render an account to the person so applying in which the charge made or claimed by the company

> for the carriage of such merchandise shall be divided, and the charge for conveyance over the railway shall be distinguished from the terminal charges (if any), and from the dock charges (if any), and if any terminal charge or dock charge is included in such account, the nature and detail of the terminal expenses or dock charges in respect of which it is made shall be specified."

In allowing the public to require such itemization of charges, these statutes, of course, permit the railways voluntarily to itemize; and they show how the English policy in favor of distinct charges for different services has stood the test of forty years' experience or more; has been extended, instead of being narrowed; and has been more and more emphatically announced.

As respects certain points of detail, these statutes show:

(*a*) A right to divide even "conveyance" charges—either as to different elements of the conveying service, such as use of way, use of cars and locomotive work; or as to different geographical parts of the conveyance, even though those parts be intermediate, instead of terminal—(at any rate, if there be some good reason for such division, as in the cited statutory instance of change from train to boat in a continuous journey).

(*b*) A most extensive right (which, indeed, is apparently unlimited, save, of course, by the two rules that the two charges must not overlap, and that the prescribed maximum conveyance charges must not be exceeded) to lay separate charges for all services of special character, including not merely strict terminal charges (such as "station accommodation, use of sidings," etc., mentioned in the Hall case), but equally charges for all services "incidental to the duty or business of a carrier."

In their bearing upon American law, the English statutes and decisions on this subject must certainly suffice to show:

(*a*) That no public policy forbids any subdivision of charges, so as to apportion the items of charge to different services, unless that subdivision goes to the extent of unreasonableness, and accordingly violates the fundamental rule that all a carrier's conduct, and particularly its charges, must be reasonable.

(*b*) Likewise, that it is entirely reasonable, and indeed best, to make distinct charge for such special services as by reason of their character or their conditions or their peculiar cost possess what may, perhaps, be described best as a certain natural distinctness. No general rule can be advanced for determining, by strict definition, what are and what are not such special services, but the question of reasonableness in this instance, as in its multifarious other applications in the law, will have to depend upon the particular circumstances of each case.

4. In spite of the long duration and large extent of the practice of making separate special charges for special services, no case is cited in condemnation of it and no statute has ever been enacted against it. If the numerous examples of the practice in the United States, some of which have already been indicated, had caused public friction or been deemed unjust, individuals would not so long have stayed out of the courts, and there would not have been complete absence of any attempts at restrictive legislation.

5. The argument from public policy is too vague, as well as too late. Where is the evil that is to be expected, notwithstanding the undoubted restriction of the practice within the bounds of reasonableness? Why has not this evil been discovered in the long years that have passed since the practice began? Public policy must be plain, beyond any fair doubt, to justify such tardy and sweeping restriction of the same liberty on the part of carriers as the

rest of the world admittedly enjoys, and, such as, undeniably, instead of being immoral, conduces to openness and fairness of conduct.

What is urged against the separation of this $2 charge, except that some day, under *other* circumstances, the practice may, perhaps, be carried too far? When it is, the law will check it as an unreasonable abuse; and, beside that, there is not the remotest practical likelihood of any attempt at abuse. If it is to be feared in the future, why has it not occurred in the past? Plainly enough, because railway carriers in this country have nothing to gain and everything to lose from unfair and oppressive methods. Under a system of unrestricted (or, as it may well be called, untempered) competition, such as prevails between the railways in this country, no railway can afford to take a burdensome course with its patrons; for, if it should, it would speedily lose them.

It being apparent enough that supposed possible inconvenience from the practice of subdividing charges is imaginary—because wholly vague and unexplained, never heretofore found in experience, positively refuted by English practice, practically most unlikely under a system of the keenest competition, and legally preventable as unreasonable—let us recapitulate some leading advantages of the practice:

(1) It shows, in an accurate and really informing way, the exact service for which a charge is made; and so tends to fairness of charge and to a better understanding and feeling.

(2) The reasonableness of the items of charge can be much more definitely and reliably tested.

(3) Shippers who do not desire all the services that under a system of undivided charges would, together, form the basis for a single aggregate charge, are given the op-

portunity to avoid such items of charge as are for services not needed by those shippers.

(4) The last feature of the matter shows that the practice of reasonably divided charges is really necessary for avoidance of those discriminations between shippers which it is the most solicitous effort of recent railway enactment to prevent; for a shipper who does not wish all the services for which an aggregate rate may be made will often have to pay for undesired services, unless itemized charges for distinct parts of the service are made; and in so far as he will thus be compelled to pay for services that he does not need, he will suffer a discrimination in favor of shippers who do want all the services on which the aggregate rate is based. In this case, why should a shipper who wishes to have a carload of live stock delivered on appellees' own tracks in Chicago, have to pay an aggregate rate large enough to include compensation for the carriage to and unloading at the Union Stock Yards?

On this question of public policy it ought, perhaps, to be added that, while no reason appears for condemning a system of reasonably divided charges on passenger traffic (at any rate if, as is always the case, the passenger is permited to pay the total of the charges in one sum), yet the rule may well enough be different as to passengers and freight; and, in fact, is different in England. (See language of Mr. Justice Wills, on page 36 of Hall opinion, 5 B. & M. Railway & Canal Traffic Cases).

6. The Interstate Commerce Act in no way lessens the common law liberty of carriers in respect of dividing their charges; but, on the contrary, recognizes and confirms it. The following quotations from the act will suffice to show this:

> "The schedule printed, as aforesaid, by any such common carrier shall plainly state the places upon its

railroad between which property and passengers will be carried, and shall contain the classification of freight in force, *and shall also state separately the terminal charges, and any rules or regulations which in any wise change, affect or determine any part or the aggregate of such aforesaid rates and charges.*"

* * * * *

"And when any such common carrier shall have established and published its rates, fares and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect or receive from any person or persons a greater or less compensation for the transportation of passengers or property, *or for any service in connection therewith*, than is specified in such published schedule of rates, fares and charges, as may at the time be in force."

Section 6, *as amended March* 2, 1889, *Supp., Rev. Stats., pp.* 684, 685.

"All charges made for *any* service rendered, or to be rendered, in the transportation of passengers or property as aforesaid, *or in connection therewith, or for the receiving, delivering, storage or handling* of such property shall be reasonable and just."

Section 1 (*Supp. Rev. Stats., p.* 529.)

"That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation *in the aggregate* for the transportation of passengers or like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line," etc.

Section 4 (*Supp. Rev. Stats., pp.* 530.)

It will be noticed, in the first place, that there is absolutely no restriction upon separate charges to be found anywhere in the statute. This would be enough to leave the common law operative.

In the second place, the affirmative recognitions of the

practice of separate charges are as ample as they well could be. Thus:

(1) The sixth section, while particularly mentioning terminal charges, refers in a much larger way to "any part or the aggregate" of a company's charges; and, indeed, it is the "rates and fares and charges *for the transportation* of passengers and property" which this section indicates may be divided, when it speaks of "any part or the aggregate of such aforesaid rates, and fares and charges"; for the "aforesaid" rates and fares and charges are those mentioned in the first paragraph of the section for transportation. The special mention of terminal charges in this section, without enumeration of other special charges, undoubtedly results from the fact that those words ("terminal charges") are here used in the wide sense of including all other charges than transportation charges—about which latter, as well as terminal charges, the statute says the tariffs must "separately" state "any rules or regulations which in anywise change affect or determine any part or the aggregate." If, therefore, a company determines any part even of a transportation charge by special regulation concerning that part, the tariffs are required to separately state such part; and this seems to make it manifest that even an ordinary transportion charge can be subdivided here, as in England.

(2) The mention in the same sixth section of charges "for any services in connection therewith," *i. e.*, with transportation, again directly contemplates such charges as distinctly stated. This phrase, as used in this section, is certainly wide enough to include any service outside of what the company charges for in its ordinary transportation rates..

(3) The same mention is made of services connected with transportation, as being something different from

ordinary transportation, in the quoted paragraph of the first section of the act.

(4) The fourth section speaks of an "aggregate" of charges "for the transportation" of passengers or property. An aggregate is the result of a summation of parts, and therefore recognizes the existence of parts. Unmistakably, therefore, this fourth section contemplates subdivision even of strict transportation charges.

In the third place, attention may again be called to the fact that reasonable subdivision of charges is accordant with, and positively necessary to, the fundamental policy of the statute in forbidding discriminations; because only by such subdivision can shippers who do not desire or receive particular services avoid having to pay for them in an aggregate rate charged to other shippers who do desire and receive such services.

Beside imposing no restrictions, the Interstate Commerce Act, accordingly, seems to affirmatively recognize

(1) The right even to subdivide transportation charges under circumstances making it reasonable.

(2) The right to make separate charges for any special services "connected with transportation."

(3) The right to make separate terminal charges of different sorts.

This full subdivision of charges is likewise in fundamental harmony with the act's policy in seeking full, accurate and practically available information to the public about all a carrier's transactions, and particularly its charges; beside being of the utmost value in helping forward the practical administration of the statute in its requirement of reasonable rates.

7. There is nothing in the Covington Stock Yards case (139 U. S. 128) in denial of the right to make a distinct charge for a special service performed by a railway for a shipper.

(1) There was no attempt to separate the terminal charge in that case from the general transportation charge. The railway established a single, entire rate for the general service of carrying to Covington; and that rate of course, in the absence of separate statement in the company's rate sheets or in the shipping contract that a terminal charge would be made for unloading at Covington, beside the general transportation charge, included the service of unloading and delivering at the end of the transportation, just as it included the service of receiving the stock at the beginning of the transportation. Nobody can contend that a general transportation charge does not include the initial receiving service and the terminal delivering service, when it is not stipulated otherwise in the contract. Accordingly, the attempt to levy the unloading charge in this Covington case was an effort to make a second charge for a service which the railway had contracted to do for the general rate alone. In other words, the Covington case was one of attempted double charging; while in this case there is no double charge, because the tariffs distinctly state that the company will not carry to the Stock Yards and there deliver for the ordinary Chicago rate. (Point II, *supra*.)

Mr. Justice HARLAN said, in the opinion in the Covington case, that the contention of the railway was

> "in effect that the carrier *may without special contract for that purpose* require the shipper or consignee in addition to the customary and legitimate charges for transportation to compensate it for supplying the means and facilities that must be provided by it in order to meet its obligations to the public. To this proposition we cannot give our assent." (Page 134.)

This is a distinct indication on the part of the court that the case might be very different where it is stipulated in advance, by tariff or by shipping instrument, that the ordinary rate shall not include the delivery service, and that a separate charge will be made for the latter.

(2) Keith, the petitioner in the Covington case, at whose instance and for whose benefit the court's order was made, did not desire to have his stock unloaded through the Covington Stock Yards; and the railway and stock yards company were attempting to make Keith pay for a service at the stock yards which Keith did not need. Keith had constructed cattle yards of his own, separated only by the width of a street from the "Covington Stock Yards," and adjoining a switch track of the railway company. With the consent of the railway company he had also constructed platforms and chutes connecting his yards with the side track. After he had had his stock delivered through his own chutes and yards for some time, the receivers of the railway company removed them, in furtherance, undoubtedly, of the attempt to make him pass his stock through the Covington Stock Yards and pay charges therefor. This was an unlawful effort to deprive Keith of his own facilities for unloading stock, in practically the same place as the Covington Stock Yards. How could the railway take advantage of its own wrong in removing Keith's chutes and yards to compel Keith to send his stock where he did not wish them to go?

Judge Showalter (in the Keenan case) presented these aspects of the Covington case very clearly:

> "Keith was the owner of appropriately constructed cattle yards separated by the width of the street from the yards of the Covington Stock Yards Company, and adjoining a switch track of the railway company. He had constructed or provided, apparently by the

license of the railway company, express or implied, platforms, chutes and enclosures connecting his yards with the side track. For a time subsequent to March 1, 1886, all cattle consigned to Keith or his firm of Keith & Wilson, who were dealers in cattle on commission, were unloaded into Keith's cattle yards; but prior to the 18th of June, 1886, the receivers caused Keith's appliances for loading and unloading to be removed from their tracks. Keith was thereafter compelled to accept delivery of cattle consigned to his firm through the yards of the Covington Stock Yards Company, and was thus obliged to pay 60 cents per car for a service which without inconvenience either to the public or the railway company he was prepared to dispense with; hence, his intervening petition. The court ordered the receivers in the event that they or their agent in that behalf, the Covington Stock Yards Company, should choose not to permit Keith thereafter to take his cattle through their yards without the 60 cent charge, to allow him to replace his platforms and chutes and to unload and deliver to him thereat (he or some agent employed by him being then present to take charge of such cattle) all cattle consigned to him or to his yards." (pp. 758, 759.)

The order in this Covington case was merely that Keith's live stock be delivered through the Covington Stock Yards without further charge, "*upon the consent of such stock yards in writing that it may be so done being filed in this court*" (Page 132 of the Supreme Court opinion); and that in default of such consent by the stock yards company Keith might restore his chutes and platforms and have his stock delivered there, as they were before they were wrongly removed. It thus becomes apparent that what Keith was adjudged entitled to was delivery on his own premises, and that delivery without charge through the Covington Stock Yards was ordered, in the event of consent to that course by the Stock Yards Company, simply as a practical equivalent for Keith's own chutes and yards which had been taken away from him; and the equivalence of the two things arose from the fact that

Keith's yards and the Covington Stock Yards were both at the same point.

Judge Showalter adverted to this feature likewise:

> "The learned counsel for appellee treat the Covington case as a pronouncement by the Supreme Court that the receivers there must forego the 60 cents per car and let Keith's cattle be delivered through the Covington Stock Yards unconditionally. On the contrary, the essential and central fact upon which the judgment went was, as already explained, that Keith's yards adjoined the track, and he had without hurt to the railway company or to the public and apparently by the license of the comyany provided the means of unloading into his own yards. He had no occasion to avail himself of the service of and the instrumentalities provided by the Covington Stock Yards Company, the concern which had assumed to that extent the duty of the carrier; hence the order that his cattle must either be loaded into his own yards, or else pass free of charge through the yards controlled by the Covington Stock Yards Company for the railroad. *If the rule of law had been as counsel for these appellees contend, then the order would have been that Keith's cattle be unloaded free of charge into the yards used by the railroad company without any alternative.*" (Page 761.)

(3) The Interstate Commerce Act was enacted in 1887, after the controversy in the Covington case arose (in 1886); the sixty cent charge of the Covington Stock Yards Company was an unloading charge; and, even if the Covington case had disapproved separate charges for special services, the rule would now be different under the Interstate Commerce Law. Unloading is one of the very things enumerated in Section 1 of the act as a special service, the charge for which Section 3 requires to be separately stated.

Third. A distinct charge for taking live stock to the Union Stock Yards and there delivering it is altogether reasonable and proper, in view of the circumstances.

It will be unnecessary, after the previous discussion of the common law, the English statutory system and the Interstate Commerce Act, to go into any critical inquiry concerning the proper name of this charge—whether it should be called a terminal charge, or a delivering charge, or a switching charge, or a charge for some other form of special service. This is so because, whatever name be given it, the circumstances show it to be proper in all three of the following aspects:

(1) As a charge which it is reasonable to make distinct, under the common law rule of reasonableness.

(2) As a charge such as the English statutes would permit to be separately made.

(3) As a charge which, being either a terminal charge or at least a charge for a service "connected with transportation," the Interstate Commerce Act affirmatively recognizes as a proper separate charge.

1. This $2 charge made by appellees has been seen to be laid for a special service over tracks in which no one of appellees has the slightest proprietary interest and over which none of them has the slightest control, in going a distance of from two to nine miles to a stock yard which is equally outside the interest and beyond the control of appellees, and of there delivering live stock. The Union Stock Yards Company makes appellees pay a special charge for the use of these tracks; and this charge is of a certain amount per car (varying from 80 cents to $1.50). Appellees, therefore, enter the tracks only under a mere single car license. The Union Stock Yards Company could forbid appellees using the tracks, or could raise its

trackage charges, any day that it might so desire. This trackage charge made against appellees is even beyond the jurisdiction of the Interstate Commerce Commission or of any other tribunal, as to its reasonableness, for it is not a carrier's charge, but a mere compensation for the use of property, which the Stock Yards Company, as owner, may resume to itself, unless it can get its own price. Beside the trackage charge, the Stock Yards Company likewise makes appellees pay an unloading charge of 25 cents per car; and that is embraced, with the trackage charge and the cost of appellee's own service upon the Stock Yard's tracks, in the $2 charge. The reason why appellees enter upon this extraordinary service, under its unusual conditions, is that the Union Stock Yards have grown to be a most important live stock market; and accordingly shippers are commonly anxious to get their stock there, notwithstanding the fact that appellees have no means of access by tracks of their own. This anxiety of most shippers to get their live stock to the Union Stock Yards is no reason, however, why other shippers, even though they be few, should not have the right to have their live stock delivered on appellees' own tracks, if they so desire, without being compelled to pay a lump rate to Chicago, based in part upon the cost of this special service to the Stock Yards; and separation of the cost of getting to the Stock Yards, by making it a separate item of charge, as appellees have done, is an appropriate way of saving such shippers from any expense on account of the peculiar Stock Yards service.

The reasonableness of a separate charge under the indicated circumstances is sufficiently plain. Indeed, the Commission itself recognizes that reasonableness; for the Commission's order in this case calls for a separate charge of $1. It is only the amount of the charge, therefore,

and not the fact of separate charge, with which the Commission quarrels.

2. Some pertinent English cases will show that this $2 charge is quite within the field of extra charge under the English statutes.

The Hall case, already cited (5 B. & M.'s Railway & Canal Traffic Cases, 28), shows that the charge would in England be considered a special charge for "the use of sidings" within the phrase "any other services incidental to the duty or business of the carrier," in Section 51 of the London, Brighton & South Coast Railway Company's Act of 1863. The charge would undoubtedly be justifiable also under that act as a "delivery" charge. In England railway companies now quite extensively make delivery of freight at the residence or business place of the consignee, substituting such delivery for the ordinary practice of delivering on their roads. Undoubtedly, a special charge could be made for this personal delivery, and it would be considered a delivery charge. Wherein does the delivery of live stock by appellees at the Union Stock Yards, off their own roads, differ substantially? The Union Stock Yards, where live stock shippers wish their cattle delivered because it is a great live stock market, is adopted by the shippers as their place of business.

The case of *Manchester, Sheffield & Lincolnshire Company* v. *Pidcock & Co.*, 10 Browne, Macnamara & Neville's Railway & Canal Traffic Company cases, 150, is thoroughly in point. The statutory schedule of charges allowed to the applicant company included (Sec. 5) a reasonable sum for services rendered "at or in connection with sidings not belonging to the company." Pidcock & Co. themselves owned a siding near the railway company's station yard, but having no direct connection with the main track and hence being accessible only by way of side tracks in the

railway company's station yard. It was held that the railway company could make a special charge, not only for service on Pidcock & Co.'s own side track, but also for the service of switching the cars over the side tracks in the station yard, because this latter service was requisite to the desired delivery in the special place of Pidcock & Co.'s own side track, and was accordingly a service "in connection with" Pidcock and Co.'s siding. How can this case be distinguished from the one at bar? The charge made by appellees is even more certainly sustainable, because it is for a service wholly off the appellees' own tracks.

A "shunting", *i. e.*, switching, service for the purpose of getting cars to a special place was upheld under an act permitting extra charges "for loading, covering and unloading and for delivery and collection, and any other service incidental to the duty or business of the carrier, * * * or for warehousing and wharfage, or for any other extraordinary services performed by the said company," in

Sowerby & Co. v. *Great Northern Railway Co.*,
7 B. & M. Railway & Canal Traffic Cases,
156.

Apart from any view of appellees' $2 charge as a siding charge, or a delivery charge, or a switching charge, it is for a service of highly special character, because it is done off appellees' premises, under a mere revocable car license, and for a charge which appellees have to pay for each car, and which is beyond control as to its reasonableness. Obviously, appellees could not be compelled to make delivery at the Stock Yards; for their charter obligations do not go beyond their own roads. If appellees consent, for the convenience of their patrons, to take live stock over the Stock Yards Company's tracks, it is a purely voluntary service, and one which appellees can any day discontinue This in itself is sufficient to make the service exceptional.

The English cases recognize this point likewise. It was said in the above cited case of *Manchester, Sheffield & Lincolnshire Railway Co.* v. *Pidcock & Co.* (10 B., M. & N.'s Railway and Canal Traffic Cases, 150):

> "The far end of the siding where Pidcock & Company load and unload is at some distance from its junction with the railway, and the railway company beside delivery at the junction, takes the trucks on to the further end of the siding. This, of course, is a voluntary service on their part, for no company is bound to travel beyond its own railway; and it may be doubted whether Section 5 applies, or should apply, to a service which a company could not be called to perform; for where an individual requires a service which it cannot have unless the company is willing to undertake it, it will be futile to fix any other sum to be paid for it than what the company thinks ought to be paid." (p. 160.)

While the charges made under such circumstances of voluntary service may well be subject to the requirement that they shall be reasonable in amount, there can hardly be a fair question that the entirely voluntary character of the service justifies separate charge of reasonable amount.

The same point as to voluntary service has again been adjudicated in England.

> *Watson, Todd & Co.* v. *Midland Railway Company*, 9 B. & M.'s Railway & Canal Traffic Cases, 90.

It is there said:

> "Now, in asking the railway company to arrange for the carriage off their own line, they were asking the railway company to do something that the railway company were under no obligation to perform." (p. 97.)

3. In view of the propriety of appellees' $2 charge, under the English statutes and decisions, as either a siding charge or a delivery charge or a switching charge or

a charge for an entirely voluntary service, it is unnecessary to argue specifically that this $2 charge may properly be classed as made for a "service connected with transportation," in the language of the Interstate Commerce Act.

It is also to be fairly considered, under modern railway and statutory usage, as a terminal charge within the language of that act. The present statutory definitions of terminal charge in England are of the most inclusive sort. and the words are obviously used in the Interstate Commerce Act, also, in a comprehensive manner.

In the *Regulation of Railways Act,* 1873 (36 *and* 37 *Vict., Ch.* 48), *Section* 15, it is declared that the railway commissioners

> "Shall have power to hear and determine any question or dispute which may arise with respect to the terminal charges of any company, where such charges have not been fixed by any act of parliament, and to decide what is a reasonble sum to be paid to any company for loading or unloading, covering, *delivery* and *other services of like nature.*"

The current definition of terminals in England, however, is as follows:

> "The term 'terminal charges' includes charges in respect of stations, *sidings*, wharfs, depots, warehouses, cranes and *other similar matters*, and of *any services rendered thereat.*"
>
> *Railway & Canal Traffic Act,* 1888 (51 *and* 52 *Vict., Ch.* 25), *Section* 55; *found in* 2 *Hodges on Railways, p.* 365.

Services on any siding are, therefore, terminal services. If a consignee has a side track of his own, say half a mile long, and wishes special delivery at the end of that side-track, the service of hauling on that track is peculiar to the special place of delivery and may fairly be considered a terminal charge. Within the English statutory definitions it is a terminal charge. It is no less so within the Interstate

Commerce Act. This case is just such, differing only in the fact that the consignee does not own the tracks to the Stock Yards. They are not tracks of the railway companies, however; and hauling over them is a service peculiar to the special delivery at the Stock Yards. They are, at least, within the words "and other similar matters," in the quoted English act of 1888; and it is not easy to suppose that "terminal charges" in the Interstate Commerce Act are narrower.

The Report of the Select Committee on Railways, 1882, contains the following language:

> "When the earlier railway acts were passed, it was supposed that the companies would be like the canal companies, who are owners of the route and their maximum tolls were fixed accordingly. But they subsequently became carriers and as carriers provided stations, sidings, warehouses, cranes and other fixed plants, which had in other cases been provided or leased by private firms. The evidence given before your committee proves conclusively that large sums have been expended by railway companies in providing from time to time for this accommodation. In the second place, they provided labor and appliances for loading, unloading, covering, collecting and delivery of traffic, which services vary with respect to different traffic. Some confusion has arisen from the use of the word 'terminal' for both these classes of service, and it would be well if distinct terms could be applied to them, such as 'station terminals' and 'handling terminals.' For these services they claim to be entitled by different acts of parliament to receive reasonable remuneration."

This report indicates that charges for the use of sidings for the purpose of reaching delivery place and for the work of deli vering, at any rate so far as the service is peculiar to any special place of delivery, are "terminal charges"; the former a so-called "station terminal," and the latter a so-called "handling terminal."

(See MacNamara's Law of Carriers, pages 226, 227.)

A discussion of the phrase "terminal charges" will be found in the opinion of the Interstate Commerce Commissioner Bragg, in the case of

Stone & Carten v. *Detroit, Grand Haven & Milwaukee Railway Company, 3 Interstate* Commerce Rep. (Lawyer's Co-operative Publishing Company's Edition), 60, 66.

See, also, concerning the propriety of a special charge in such circumstances as those of the present case,

National Tube Works Company v. *B. & O. Railway Company*, 8 Atl. Rep., 6 (Pa.).

Owen v. *St. L. & S. F. Ry. Co.*, 83 Mo., 454, 464.

4 *Elliott on Railroads, Section* 1566.

Detroit, G. H. & M. Ry. Co. v. *Interstate Commerce Com.*, 74 Fed. Rep., 803.

S. C., on appeal, as *Interstate Commerce Com.* v. *Ry. Co.*, 167 U. S., 633, 644-5.

4. All the advantages generally incident to a separate charge for a special service are found in the case of this $2 charge, viz., increased definiteness and consequent accuracy and intelligibility of charge, enhanced opportunity for reliable test as to reasonableness, avoidance of the charge by such as do not need the service for which it is laid, and consequent escape from a real discrimination between shippers needing the service and those not needing it. These advantages have been sufficiently commented upon in previous parts of this brief; but it should be noticed that there are two further special advantages from the separation of charge in the present case, viz:

(1) Stability in the charge. The number of shipping points in the west from which live stock goes to Chicago is enormous, and there is, therefore, an enormous number

of different rates to Chicago. These rates, unavoidably, over such a large area, with such complicated and shifting conditions of various kinds, are constantly fluctuating. If the charge for the terminal service were merely included as one element in an aggregate rate, it would, with the rest of the rate, be exposed to the influence of varying circumstances, such as affect the ordinary Chicago rates at large, and times would frequently come when it would be more difficult than with a separate charge for appellees to get fair compensation for the terminal work. Putting the charge in a form that attaches it distinctly to the special service for which it is laid tends to preserve it unchanged.

(2) A great portion, and perhaps most, of the live stock rates to Chicago are made from shipping points on the roads of companies other than appellees, and hence are joint rates which appellees have to divide with their connecting carriers. Appellees, however, do all the work for which the $2 charge is laid; and so long as it remains a distinct charge for this special work which appellees alone do, no question can be made about all of it going, as it ought, into the treasury of appellees. If, however, the character of the charge were obscured by its inclusion in a single aggregate rate, there would be constant pressure by connecting carriers for division of the entire rate, with the result of their sharing in the return for the terminal service which appellees alone perform.

5. Appellant's attorneys speak of the Stock Yards as "appellees' depot" for the delivery of live stock. This is one of the many cases where naming is unimportant, if the name does not lead to confusion and consequent disregard of realities. The actual facts are plain and undisputed in this record—that the appellees do not own, and have no control over, the Stock Yards, or the tracks of the Stock Yards Company leading to them; that such use

as appellees make of the Stock Yards Company's tracks and pens is merely under revocable license, for a price per car; that the service which appellees render in taking live stock to the Stock Yards is a voluntary service, beyond their charter obligations, which they may at any time discontinue; and that, by their tariffs, appellees treat delivery of live stock at the Union Stock Yards as different from an ordinary delivery on their own rails, declining to apply the ordinary Chicago rate to the former case, and imposing the special $2 charge for the peculiar service of getting to the Stock Yards and there delivering, at the cost to themselves not merely of their hauling expenses, but also of the trackage and unloading charges made by the Union Stock Yards as a condition for the use of its property by appellees. If the Union Stock Yards are called a depot of appellees, it can only mean that appellees voluntarily take stock there, when a shipper requests it, in the indicated manner and under the indicated circumstances and on the indicated terms. Calling the Stock Yards a depot in this sense does not alter the case; and calling them a depot in any other sense is impossible on the record.

6. Much is also said by appellant's attorneys to the effect that appellees have no facilities for unloading live stock on their own roads in Chicago; and on this basis they attempt to argue, or rather they insidiously suggest (for they do not argue it), that appellees must take live stock to the Union Stock Yards and deliver it there for nothing. If such a contention as this needs answers, there are several.

In the first place, the extent of special facilities for handling live stock that a carrier ought to supply depends upon the extent of the need for them. If the quantity of live stock to be delivered in a given place is small, so that it may be handled satisfactorily without special facilities,

there is no obligation upon the carrier to supply them. It is perfectly well known that occasional small lots of cattle can be handled without unusual facilities. Movable chutes and ordinary inclosures will suffice for such limited traffic. While it is shown in this record that most appellees have no extensive facilities on their own roads for handling live stock, it is neither shown nor pretended that they fail in successfully and properly handling such occasional lots of cattle as are delivered on their own roads, without going to the Stock Yards. The contrary is the fact. Indeed, the Atchison company has extensive facilities for handling live stock on its own road at Corwith. (Rec., 27.) The other appellees, without having such large special structures, have all the ordinary means of extensive railway plants, including, of course, more than ample inclosures for the little live stock which occasional shippers may not send to the Union Stock Yards; and they are not shown to have failed in a single instance to properly handle such a consignment.

But the plain and conclusive reply in this case to any argument founded on the claim that appellees have not sufficient facilities of a special character for unloading live stock on their own roads in Chicago, is that the lack of such facilities is wholly immaterial to the present issue.

This proceeding relates to the general question of what may properly be charged for transporting live stock from various shipping places to the Union Stock Yards. It stands admitted, therefore, for the purposes of the proceeding, that the live stock is consigned to the Union Stock Yards; for, otherwise, it does not have to pay the terminal charge which is the subject of the present litigation. If there be no adequate facilities for delivering live stock on appellees' own roads in Chicago, how does that fact injure shippers who direct their live stock to

be delivered at the Union Stock Yards? Such shippers would not make use of the arrangements for handling live stock on appellees' own roads even if such arrangements existed. Indeed, a delivery of live stock consigned to the Union Stock Yards anywhere else than at the Union Stock Yards—and even on appellees' own roads in Chicago—would be a misdelivery and a violation of the shippers' instructions. It is no reason why a shipper should not pay a proper price for use of terminal facilities that the carrier has no terminal facilities at another point to which the consignment is not made, and where it could not lawfully be delivered. The claim in the present case that live stock must be carried to the Union Stock Yards and delivered there without charge, because appellees have no extensive facilities for handling live stock on their own roads in Chicago, is no more rational than it would be to claim that a man who ships merchandise from Chicago to St. Paul over the North-Western road is entitled to have the service performed for him without charge, because the North-Western company has no station building somewhere on the prairie between Chicago and St. Paul. Only shippers wishing their stock delivered on appellees' own roads in Chicago, rather than at the Union Stock Yards, can raise the question whether appellees have adequate live stock facilities on their own roads; and the remedy of such shippers, if adequate live stock facilities do not exist on appellees' own roads, will be mandamus to compel provision of such facilities.

The Court of Appeals disposed of this matter very clearly in the Keenan case, as follows:

> "Upon the general and ordinary obligation of a common carrier of such freight to provide the appliances for unloading, and upon the fact that appellants have not provided means for unloading and delivering cattle at their freight depot in Chicago,

petitioners argue: First, that the $2 per car is for depot facilities at the stock yards; and, second, that the stock yards station must be held to be appellants' 'Chicago station,' in the same sense as would be the terminal station at 12th and State streets if cattle yards and facilities for unloading were there provided. *But the obligation of appellants to furnish delivery facilities upon their line of road in Chicago is not due to these petitioners with respect to cattle which appellants are expected to bring to the Union Stock Yards.*" (73 Fed. Rep., 760.)

Again:

"When, as here, the delivery is to be made in Chicago, but at a point away from the carrier's line, and by means of a track not owned or possessed by the carrier, the printed schedule of such carrier showing in two items the compensation exacted for the haul to Chicago, and that exacted for the transfer in Chicago to the point of delivery, the theory that such carrier is bound by law to unload such freight at a station on its own line in Chicago, and that the transfer from its line to a point on the other line for the purpose of delivering at the latter point (being an equivalent or substitute for what ought to have been done pursuant to such supposed obligation) is comprehended in the service of hauling to some station on its line in Chicago, is unsound. One side of the proposed equation is mythical. *There is no obligation on the carrier in such a case, and as to such a consignment, to unload at a station on its line in Chicago, or to provide unloading and delivery facilities at such station.*" (pp. 761, 762.)

7. Suppose that the Union Stock Yards Company itself hauled the live stock from the junction point of their tracks with appellees' roads, and charged appellees $2 per car as a total compensation for their trackage, their hauling and their unloading, and that appellees, for the purpose of reimbursing themselves, should then charge this $2 back to their shippers in the form of just such a separate charge as they now make. Who would question in that

case the propriety of appellees' $2 charge; and how does the present case differ in substance from the supposed transaction, as respects the propriety of appellees' $2 charge?

IV.

A PROCEEDING SUCH AS THIS, UNDER SECTION 16 OF THE INTERSTATE COMMERCE ACT, CALLS UPON THE FEDERAL COURTS TO EXERCISE THEIR INDEPENDENT JUDGMENT UPON THE FACTS AS WELL AS THE LAW OF THE CASE; AND THE CONCLUSIONS OF THE COMMISSION UPON QUESTIONS OF FACT MUST BE REJECTED BY THE COURTS IF SUCH CONCLUSIONS CONTRAVENE RULES OF LEGAL INFERENCE FROM ADMITTED OR ESTABLISHED FACTS, OR IF SUCH CONCLUSIONS APPEAR TO THE COURTS TO BE AGAINST THE PREPONDERANCE OF EVIDENCE. THE FACTS BY WHICH THE COMMISSION'S CONCLUSIONS OF FACT ARE TO BE TESTED MAY, OF COURSE, BE FURNISHED EITHER BY THE COMMISSION'S OWN FINDINGS OR BY EXTRANEOUS EVIDENCE INTRODUCED ON THE HEARING IN COURT.

1. The statutory provisions regulating such a proceeding as the present are as follows:

> "That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate, or refuse or neglect to obey or perform any lawful order or requirement of the Commission created by this act, not founded upon a controversy requiring a trial by jury as provided by the Seventh Amendment to the Constitution of the United States, it shall be lawful for the Commission, or for any company or persons interested in such order or requirement, to apply in a summary way by petition to the Circuit Court of the United States, sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or

requirement shall happen, alleging such violation or disobedience, as the case may be.

And the said court shall have power to hear and determine the matter on such short notice to the common carrier complained of as the court shall deem reasonable, and such notice may be served on such carrier, or its officers or agents, or servants, in such manner as the court shall direct.

And said court shall proceed to hear and determine the matter speedily, as a court of equity, and without the formal pleading and proceeding applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute in such mode and by such persons as it may appoint all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition.

And on such hearing the findings of fact in the report of said Commission shall be *prima facie* evidence of the matters therein stated; and if it be made to appear to such court on such hearing, or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction, or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same."

Section 5 of Act of March 2, 1889, amending Section 16 of Interstate Commerce Law (1 *Sup. to U. S. Rev. Stats.*, 688).

The power and duty of the court to judge the evidence for itself follow plainly from this statute. It is enough to notice that the appeal is to the chancery side of the court; that it must appear to the court "that the *lawful* order of said commission drawn in question has been violated"; that the court is "to hear and determine the matter speedily, as a court of equity, * * * in such

manner as to do justice in the premises"; that power is given the court to prosecute "all such inquiries as the court may think needful to enable it to form a just judgment in the matter,"—and such inquiries of course would be upon matters of fact; and that the findings of fact by the Commission are merely *prima facie* evidence, *i. e.*, rebuttable.

The result is that the court is to try and determine the proceeding *de novo* as a chancellor, and must determine for itself from all the evidence whether the Commission's conclusions, even on questions of fact, were right.

2. This court has already held the statute to have the effect which we have stated, and the ground is covered by the following quotation:

> "The first contention we encounter, upon this branch of the case, is that the Circuit Court had no jurisdiction to review the judgment of the Commission upon this question of fact; that the court is only authorized to inquire whether or not the Commission has misconstrued the statute and thereby exceeded its power; that there is no general jurisdiction to take evidence upon the merits of the original controversy; and, especially, that questions under the third section are questions of fact and not of law, and hence unreviewable.
>
> We think this contention is sufficiently answered by simply referring to those portions of the act which provide that, when the court is invoked by the Commission to enforce its lawful orders or requirements, the court shall proceed, as a court of equity, to hear and determine the matter, and in such manner as to do justice in the premises.
>
> * * * * *
>
> Accordingly our conclusion is that it was competent, in the present case, for the Circuit Court, in dealing with the issues raised by the petition of the Commission and the answers thereto, and for the Circuit Court of Appeals on the appeal, to determine the case upon a consideration of the allegations of the

parties and of the evidence adduced in their support, giving effect, however, to the findings of fact in the report of the Commission as *prima facie* evidence of the matters therein stated.

It has been uniformly held by the several Circuit Courts and the Circuit Courts of Appeal, in such cases, that they are not restricted to the evidence adduced before the Commission, nor to a consideration merely of the power of the Commission to make the particular order under question, but that additional evidence may be put in by either party, and that the duty of the court is to decide, as a court of equity, upon the entire body of evidence.

Coming at last to the questions of fact in this case, we encounter a large amount of conflicting evidence. It seems undeniable, as the effect of the evidence on both sides, that an actual dissimilarity of circumstances and conditions exist between the cities concerned, both as respects the volume of their respective trade and the competition, affecting rates, occasioned by rival routes by land and water. Indeed, the Commission itself recognized such a state of facts by making an allowance, in the rates prescribed, for dissimilarity resulting from competition, and it was contended on behalf of the Commission, both in the courts below and in this court, that the competition did not justify the discriminations against Troy to the extent shown, and that the allowance made therefor by the Commission was a due allowance.

The issue is thus restricted to the question of the preponderance of the evidence on the respective sides of the controversy. We have read the evidence disclosed by the record, and have endeavored to weigh it with the aid of able and elaborate discussions by the respective counsel.

No useful purpose would be served by an attempt to formally state and analyze the evidence, but the result is that we are not convinced that the courts below erred in their estimate of the evidence, and that we perceive no error in the principles of law on which they proceed in the application of the evidence."

Interstate Commerce Commission v. *Alabama Midland R'y. Co.*, 168 U. S., 174–176.

The decisions of all the courts—the Circuit, the Court of Appeals and this court—were, in the case just cited, against the Commission on the facts.

In the case of *Texas & Pacific Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S., 197, this court decided that the Court of Appeals ought not to consider the facts, and itself render decree thereon, when the Commission itself has failed (through a mistaken view of the law) to investigate the facts. In other words, the appellate courts are not to assume the initiative as to the facts, though they will and must revise the Commission's conclusions of fact when once the Commission has made them. The decision of the Court of Appeals was reversed by this court, because the former undertook to justify the Commission's orders by finding facts which the Commission had not investigated. The distinction between the impropriety of the Court of Appeals' considering, originally, new questions of fact not considered by the Commission, and its reviewing, on the other hand, the questions of fact which were actually investigated by the Commission, is clearly set forth in the recent case of

Louisville & Nashville Ry. Co. v. *Behlmer*, 175 U. S., 648.

Mr. JUSTICE WHITE there said:

> "If, then, we were to undertake the duty of weighing the evidence in this record, we would be called upon, as a matter of original action, to investigate all these serious considerations which were shut out from view by the Commission and were not weighed by the Circuit Court of Appeals, because both the Commission and the court erroneously construed the statute. But the law attributes *prima facie* effect to the findings of fact made by the Commission, and that body, from the nature of its organization and the duties imposed upon it by the statute, is peculiarly competent to pass upon questions of fact of the character here arising. In *Texas &*

Pacific Railway v. *Interstate Commerce Commission* (*ubi supra*) the court found the fact to be that the Commission had failed to consider and give weight to the proof in the record, affecting the question before it, on a mistaken view taken by it of the law, and that on review of the action of the Commission the Circuit Court of Appeals, whilst considering that the legal conclusion of the Commission was wrong, nevertheless proceeded as a matter of original investigation to weigh the testimony and determine the facts flowing from it. The court said (p. 238):

'If the Circuit Court of Appeals was of opinion that the Commission in making its order had misconceived the extent of its power, and if the Circuit Court had erred in affirming the validity of an order made under such misconception, the duty of the Circuit Court of Appeals was to reverse the decree, set aside the order, and remand the cause to the Commission, in order that it might, if it saw fit, proceed therein according to law. The defendant was entitled to have its defense considered, in the first instance, at least, by the Commission upon a full consideration of all the circumstances and conditions upon which a legitimate order could be founded. The question whether certain charges were reasonable or otherwise, whether certain discriminations were due or undue, were questions of fact, to be passed upon by the Commission in the light of all facts duly alleged and supported by competent evidence, and it did not comport with the true scheme of the statute that the Circuit Court of Appeals should undertake, of its own motion, to find and pass upon such questions of fact, in a case in the position in which the present one was.'" (pp. 675–676.)

Mr. JUSTICE SHIRAS added, in 162 U. S., 197, immediately after the preceding quotation from him by Mr. JUSTICE WHITE, the following paragraph:

"We do not, of course, mean to imply that the Commission may not directly institute proceedings in a Circuit Court of the United States charging a common carrier with disregard of the provisions of the act, and that thus it may become the duty of the

court to try the case in the first instance. Nor can it be denied that, even when a petition is filed by the Commission for the purpose of enforcing an order of its own, the court is authorized to 'hear and determine the matter as a court of equity,' which necessarily implies that the court is not concluded by the findings or conclusions of the Commission; yet as the act provides that, on such hearing, the findings of fact in the report of said Commission shall be *prima facie* evidence of the matters therein stated, we think it plain that if, in such a case, the Commission has failed in its proceedings to give notice to the alleged offender, or has unduly restricted its inquiries upon a mistaken view of the law, the court ought not to accept the findings of the Commission as a legal basis for its own action, but should either inquire into the facts on its own account, or send the case back to the Commission to be lawfully proceeded in." (pp. 238–239.)

In the case of *Texas & Pacific Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S., 184, the Commission had ordered two different things: (1) that rates from Cincinnati to Social Circle should not exceed the longer-distance rates from Cincinnati to Augusta; and (2) that rates from Cincinnati to Atlanta should not be more than $1 per hundred weight. While the first part of the order was upheld, the second part (concerning Atlanta rates) was overturned by the courts for the following reason, as stated by Mr. JUSTICE SHIRAS:

"Without stating the reasoning of the Circuit Court, which will be found in the report of the case in 64 Fed. Rep., 981, the conclusion reached was that the evidence offered in that court was sufficient to overcome any *prima facie* case that may have been made by the findings of the Commission, and that the rate complained of was not unreasonable.

As already stated, the Circuit Court of Appeals adopted the views of the Circuit Court in respect to the reasonableness of the rate charged on first-class freight carried on defendant's line from Cincinnati to Atlanta, and as both courts found the existing

rates to have been reasonable, we do not feel disposed to review their finding on that matter of fact." (pp. 195–196.)

3. The facts found by the Commission itself cannot have less evidential value to rebut the Commission's conclusions than the same facts would have if the Commission had not found them and they had been established by evidence in court; and we shall later contend that the Commission's conclusions in this case are rebutted by facts which they themselves find.

4. Thus far our argument has been merely that the court is called upon to weigh the evidence for and against the Commission's conclusions. Even if that were not true, it would be manifest that the court must reject such conclusions of fact by the Commission as are wholly unreasonable upon the evidence. Even a verdict of a jury must be set aside by the court, if it be such as a reasonable man could not render upon the evidence. The error in the verdict becomes in such case error in law, and not merely error of fact, and appellate law courts, which by their constitution have to do only with errors of law may and must set aside verdicts on such grounds. No less is true of the power of courts over the conclusions of the Interstate Commerce Commission.

As shown in the Statement of Facts, the Commission found that the cost of the terminal service in Chicago is not less than $2, the amount of the terminal charge; and we shall contend that the law forbids the idea that a charge is unreasonble in amount which does not exceed the cost of the service for which it is rendered. A verdict by a jury that such a charge is unreasonable would be set aside by any court.

V.

ONLY THE $2 CHARGE—NOT THE GENERAL CHICAGO RATE—WAS THE SUBJECT OF COMPLAINT BEFORE THE COMMISSION, OR WAS INVESTIGATED BY THE COMMISSION, OR IS THE BASIS OF THE COMMISSION'S ORDERS HERE SOUGHT TO BE ENFORCED. NO QUESTION CONCERNING THE GENERAL CHICAGO RATE IS INVOLVED IN THIS PROCEEDING; AND IF THE TERMINAL CHARGE IS IN ITSELF LAWFUL, THE CIRCUIT COURT WAS RIGHT IN DISMISSING THIS PROCEEDING, AND ITS ACTION MUST BE AFFIRMED BY THIS COURT, WITHOUT ANY CONSIDERATION OF THE PROPRIETY OF THE GENERAL CHICAGO RATE.

1. The petition herein assails only the terminal charge. It declares that the original petition to the Commission alleged "that defendants imposed an unjust and unreasonable terminal charge at Chicago, Ill., of $2 per carload of live stock, and in imposing such terminal charge defendants unjustly discriminated against the said City of Chicago, Ill." (Rec., 2.) It declares that the Commission found "that said terminal charge at Chicago, Ill., of $2 per car of live stock was unjust, unreasonable and unlawful." (Rec., 3.) It alleges the making of the Commission's orders in reference solely to the terminal charge (Rec., 3); and avers that appellees disobeyed those orders by not reducing the terminal charge. (Rec., 5.) Finally, the prayer of the petition is that defendants be judicially directed to comply with the orders of the Commission relating solely to the terminal charge. (Rec., 5.)

2. The Commission recognized in its opinion that the question before it related solely to the terminal charge, saying:

"This brings us to the real question, and it is im-

portant to observe exactly what that question is. *It is not as to the reasonableness of the through rate as a whole, including this terminal charge, but merely as to the lawfulness of the terminal charge itself.*

Ordinarily the whole rate is the only thing which is or can be considered and passed upon. The Commission has nothing to do with the division of that rate, that being a matter which is left entirely to the agreement of the carriers themselves. *Here, however, the rate as a whole is not called in question, and there is no evidence in the case from which it can be found that the through rate from the points in question to Chicago is or is not a reasonable rate.* It must be assumed that the rate, excluding this terminal charge, is a fair one to both parties.

If the through rate were what was really aimed at by the complaint, then all ground of complaint has been removed since the complaint itself was filed. About October 1, 1896, rates on live stock from points embraced in the territory covered by this complaint to all western markets, including Chicago, were reduced 5 cents per hundred pounds. This would amount to from $10 to $15 per car. Therefore, the Texas shipper could actually deliver his stock in Chicago for from $8 to $13 per carload cheaper than he could before the $2 rate was imposed, and all the complaint asks for is the abolishment of that terminal charge.

This charge is imposed by the terminal carriers at Chicago, and those carriers receive and retain the entire amount of that charge. The complaint is that this charge is an unlawful one, that *no matter what the Chicago rate may be* the addition of this particular sum to that rate is in violation of the Act to Regulate Commerce." (Rec., 34.)

Confessedly, also, the through rates to Chicago from a very large portion of the great region where live stock is raised and whence it is shipped to Chicago, have been largely reduced since June 1, 1894, when the terminal charge was established. The quotation just made from the Commission states that fact. The reduction is found to have been 5 cents per hundred pounds, which is more than five times the amount of the terminal charge, inasmuch

as an average carload of stock certainly exceeds twenty thousand pounds. If the ordinary Chicago rate were the subject of complaint these reductions since June 1, 1894, would more than have met the complaint.

3. The orders made by the Commission, and here sought to be enforced, deal only with the terminal charge. They forbid that charge absolutely, and without any reference to the the amount of the ordinary Chicago rate at any time.

4. The Commission dismissed from the proceeding and made no order against the carriers, originally made defendants before the Commission, who are parties with appellees to the rates to Chicago from far the largest part of the live stock shipping area. This action of the Commission was because such carriers, other than appellees, did not participate in the terminal charge, which is received solely by appellees, who alone do the terminal work. If, however, the complaint were about the ordinary or flat Chicago rates, and if such rates were found too high, the order of the Commission and of the courts would have to be against all the carriers participating in the Chicago rates, and not merely against appellees.

5. It is further to be remembered that the rates to Chicago from live stock shipping points in the tremendous territory to the north-west, west and south-west of Chicago are thousands in number. Those rates have been fixed at different times by different agencies, under different circumstances, and in response to different competitive influences and conditions. Determination of the reasonableness or unreasonableness of one of those rates would do nothing toward determining the reasonableness or unreasonableness of another of those rates. Some of them may be unreasonable, even if most of them are

reasonable. No such task as adjudication upon the propriety of all those rates was presented to the Commission or is now before the court.

VI.

THE $2 TERMINAL CHARGE IS SHOWN BY THE COMMISSION'S OWN FINDINGS TO BE LESS THAN THE ACTUAL COST OF THE TERMINAL SERVICE FOR WHICH IT IS CHARGED, AND IS THEREFORE CONCLUSIVELY PROVED TO BE REASONABLE.

While this point is the focus of the entire case, it will need no extensive argument, in view of the Commission's explicit findings. We shall refer to these findings as set forth in the Statement of Facts at the beginning of this brief; shall also call attention to other important evidential facts found by the Commission and supporting the reasonableness of the charge; shall urge, and refer to this court's decisions, that a railroad charge which does not exceed the cost of service cannot be unreasonably high; and shall finally comment briefly upon the argument of the Commission on this head.

1. In the Statement of Facts we have already called attention to the Commission's findings concerning the cost of the terminal service, as follows:

(1) Detailed showing of such items of cost as can be directly calculated. (Statement of Facts, pages 9, 10; Rec., 25, 26.)

(2) Intervener, the Chicago Live Stock Exchange, frankly stated that the amount of the terminal charge is reasonable. (Statement of Facts, page 9; Rec. 41.)

(3) The Commission conceded, in the midst of the hearing before it, that the cost of the terminal service

equals the charge for it, and dispensed with the introduction by appellees of any further testimony on that point. (Statement of Facts, page 12; Rec., 48.)

(4) The Commission explicitly found, on the application for rehearing, that the terminal charge is reasonable unless circumstances forbid imposing a terminal charge. We repeat that finding here:

> "To remove all doubt upon that subject, however, if it is not clearly found, we now find that, looking entirely to the cost of service, and including as a part of that cost the trackage charge paid the Union Stock Yards and Transit Company and the unloading charge paid that same company, *the amount of this terminal, if, under the circumstances of this case, it is proper to impose the charge, is reasonable.* If any modification of the present findings is necessary, they are hereby modified to that extent." (Statement of Facts, page 12; Rec., 49.)

2. There are two evidential facts, not mentioned in the Statement of Facts, but found by the Commission, which are almost as forcible as the direct finding of the Commission, to show that the terminal charge is reasonable.

> (1) "If the charge for this terminal service is to be regulated by what is ordinarily charged for switching, the present charge is a reasonable one. The testimony showed that it seldom happened that a lower switching charge than $2 was made, and that this amount was often exceeded." (Rec., 27.)

It will be remembered that the distance over which cars of live stock have to be hauled by appellees, on other than their own tracks, varies from two to nine miles. (Rec., 27.)

(2) The Commission also found what it costs to haul a carload of dead freight to the Union Stock Yards over the same routes traversed by cars of live stock; and this finding ought in itself to be practically conclusive as to the

reasonableness of the terminal charge on live stock, for it cannot be pretended that it costs less to haul a car of live stock than to haul a car of dead freight. The Commission's finding on this point is as follows:

> "The building of the packing houses in 1878 furnished large quantities of dead freight both in and out over the tracks of the Stock Yards Company, and for moving the cars containing this freight that company imposed from the first a wheelage charge of 40 cents per car each way. From 1878 down to June, 1893, the railroad did the work of moving these cars in and out over the tracks of the Stock Yards Company. At first each carrier moved its own cars, but soon an arrangement was made by which certain engines and a certain gang were employed in this work, the different carriers paying the actual expense in proportion to the number of cars moved. In 1893 it seemed best on all accounts that the Stock Yards and Transit Company should undertake to move these cars in and out over its tracks, and an arrangement was made by which the various railroad compaines were to pay the Stock Yards and Transit Company for this service upon the basis of what it had actually cost the railroads themselves. This was found to be about 80 cents a car each way, which, added to the trackage charge of 40 cents a car each way, makes $2.40 per car in all, and at the present time the defendants pay the Union Stock Yards and Transit Company $2.40 for every car of dead freight which is handled in and out of the stock yards. This applies to all the defendants, except the Northwestern and the Chicago, Burlington and Quincy, which pay $3.10 per car, the distance being greater in the case of those companies." (Rec., 24.)

It thus appears that the cost of hauling a car of dead freight over the same tracks as are used for live stock cars amounts to $1.60 per car (exclusively of any trackage charge); and addition of the trackage charge, varying from 80 cents to $1.50, makes the total cost from $2.40 to $3.10 per car. As we said before, there can be no pretense that the live stock service costs less; on the con-

trary, it costs more because there is an additional unloading charge of 25 cents per car.

3. The law itself forbids any idea that a charge which does not exceed the actual cost of the service for which it is laid is unreasonably large. Indeed, the law allows a reasonable profit above the cost. Whether a charge is reasonable which does not exceed the cost is not a question of fact, but of law; and only an affirmative answer is permissible under the law.

This need not be amplified. It is the fundamental principle of all the so-called "rate cases," in which schedules of railroad rates established by railroad commissions, or even by legislatures, have been held unconstitutinal, because not compensatory.

Smythe v. *Ames*, 169 U. S., 466.

Reagan v. *Farmers' Loan & Trust Co.*, 154 U. S., 362.

C. M. & St. P. Ry. Co. v. *Minnesota*, 134 U. S., 418.

If a railroad company can be compelled to perform one service for a charge less than the cost of that service, it can be equally compelled to do other service for less than cost; and so its entire business can be required to be done at a loss.

4. The argument by which appellant seeks to accomplish the result of requiring the terminal service to be done for less than cost (if not, indeed, gratis) is that appellees did the service of carrying live stock to Chicago from various shipping points, and of delivering live stock at the Union Stock Yards, before June 1, 1894, for the ordinary Chicago rate without any terminal charge; that the ordinary rate was presumably reasonable compensation for the entire service, including carriage to the Union

Stock Yards, and that, consequently, the addition of the $2 terminal charge on June 1, 1894, makes appeelles' compensation too great. Before stating the conclusive reply to this reasoning (as respects the reasonableness of the terminal charge) it should be said that the argument rests upon premises which are purely technical and altogether false. The argument assumes that the rates before June 1, 1894, were exactly right, though there is no evidence whatever on that point; and it further assumes that the ordinary Chicago rates have not been reduced since June 1, 1894, whereas, in fact, they have been reduced very much more than enough to offset the terminal charge over a large part of the live stock shipping area. (Rec., 34.)

The question whether the Chicago rates, from all the various stock shipping points, were as high on May 31, 1894, as could properly be charged for the transportation of live stock from those various shipping points to the Union Stock Yards at Chicago, was not investigated by the Commission. As already shown, it was not made an issue by the pleadings before the Commission, and no evidence whatever on that question is in the record. The Commission itself states that "there is no evidence in the case from which it can be found that the through rate from the points in question to Chicago is or is not a reasonable rate." (Rec., 34.) It would be an appalling task to undertake an investigation of the reasonableness, on May 31, 1894, of all the rates on live stock between the live stock producing territory and Chicago; and, as already stated in this brief, all these various rates would have to be considered separately on their own several merits. The statement of the Commission that the rates existing May 31, 1894, may be assumed to be reasonable is a pure technicality. If such rates had been attacked, they would have been assumed not to be too high, under

the general presumption of innocence extended to any defendant in a court of justice; but they would not have been presumed, even when thus directly attacked, to have been all that could have been properly charged. The presumption would be merely that they were not more than could properly be charged. Such presumption is not of evidential value in a case like the present. If a rate is to be taken as right because it is in existence at a given time, there is as much reason for supposing the rates right as they have stood since June 1, 1894, as there is for supposing them right before that time. How foolish it is for a tribunal that is seeking to arrive at the truth and do justice to condemn the terminal charge of $2, which is demonstrated to be less than the value of the terminal service for which it is laid, on the mere claim that the Chicago rates prior to June 1, 1894, must be supposed (without any evidence whatever) to have been exactly right—and that, too, from every shipping point in the great area traversed by appellees' lines of railroad, and shipping live stock to Chicago, viz., Illinois, Wisconsin, Minnesota, Iowa, Missouri, Texas, Kansas, Oklahoma, Nebraska, Wyoming, North Dakota, South Dakota, Montana, and the great regions still further west. Let the court consider these three things:

(1) The almost insuperable difficulty of determining in any case just the right amount of charge for a particular railroad transportation.

(2) The fact that railroad charges are in most cases profoundly influenced, if not wholly determined, by competitive and other general conditions.

(3) The fact that Chicago live stock rates were fluctuating before June 1, 1894, all the time up and down, as railroad rates inevitably go everywhere, in response to varying conditions; and that there is no more reason for

supposing the existing rates to be right at one period of the fluctuation than at another period—and then, with these considerations in mind, let the court estimate at its true worth an argument that rests on the premises (unsupported by evidence) that the thousands of different rates on live stock to Chicago from all the great live stock raising territory happened to be of just the right amount on May 31, 1894—so exactly right, indeed, that an addition of a fraction of a cent per hundred weight would make the rate unreasonably high! Such is the foundation of the argument upon which appellant asks this court to reverse the Circuit Court and compel appellees to do for $1 (or possibly for nothing) a terminal service that indisputably costs more than $2.

The second assumption in appellant's argument is also wrong in fact. It supposes that the Chicago rates have remained the same since June 1, 1894. On the contrary, they have been largely reduced since then over extensive portions of the live stock raising region. (Rec., 34.) These reductions, it is true, were not made for the purpose of offsetting the terminal charge; but they have that effect none the less, and would destroy the argument of appellant under discussion.

5. The final reply, however, to appellant's contention that the total charge for carrying from the place of shipment to the Union Stock Yards is now more than it was on the day before June 1, 1894—for the Commission actually considers the situation with reference to May 31, 1894 (Rec., 49)—should be independently stated, because of its absolute conclusiveness, and is as follows:

Appellant's argument, if it can be supposed to indicate anything, tends merely to show that the flat Chicago rate is too high, and has not the least tendency to show that the $2 terminal charge is too high.

Let us take, for example, a shipment of live stock from Kansas City to Chicago Union Stock Yards. We will suppose that the rate from Kansas City to Chicago, on May 31, 1894, was $100. The Commission says that such rate was charged that day (May 31, 1894) for carrying from Kansas City clear to the Union Stock Yards; and now, says the Commission, the shipper has to pay $102 (the regular rate plus the terminal charge) for the same service. Assuming then that the $100 charge was right, the Commission says that $102 is too much, and that the terminal charge is consequently unreasonable. We have already seen (in point 4 just preceding) that the premises of this argument are wrong. It cannot be known (for there is no evidence on that most complicated question) whether the Chicago rates on May 31, 1894, were exactly right; and beyond that, the Chicago rates have been extensively reduced since June 1, 1894. But passing these difficulties, and admitting the premises for present purposes, does it follow that the $2 terminal charge is wrong? Not at all. The argument leads merely to the view that $102 is too much to charge from Kansas City to the Union Stock Yards; but it does not show that the excess is in the $2 terminal charge. On the contrary, it follows mathematically that the excess (assuming it to be somewhere in the $102) is in the flat Chicago rate, as it has been since June 1, 1894, and not in the $2 terminal charge. This follows from two considerations:

(1) Of the total charge of $102, which is supposed to be wrong, the terminal charge factor ($2) is shown, by direct evidence, to be right, because the terminal service is shown to cost $2. The whole $102 being supposed to be wrong, and one factor, the $2 terminal charge, being known to be right, the error (if anywhere) must be in the other factor, viz., the flat Chicago rate.

(2) The same thing appears in another way. Before June 1, 1894, the $100 flat rate to Chicago is supposed by appellant's argument to have paid for carrying the live stock all the way to the Union Stock Yards. Now, however (on appellant's erroneous assumption that the Chicago rate has not since been reduced), the same charge of $100 is made, under appellees' existing tariffs, for the shorter service of carrying merely to the junction point of appellees' own roads with the tracks of other companies leading to the Stock Yards. If $100 was right for the larger service on May 31, 1894, $100 must now be wrong for the smaller service for which it has been charged since June 1, 1894.

It is thus demonstrable that appellant's argument, if all its premises are admitted, leads only to the conclusion that the flat Chicago rate is wrong, and in no way assails the reasonableness of the $2 terminal charge.

The Commission itself at one time saw the force of the point. We quote from their second opinion:

> "The defendants contend that the terminal charge is a reasonable one, and that if any part of the rate is wrong it is the charge for transportation from the point of origin to the point in Chicago where the cars leave the tracks. *Abstractly this may be true,* but in dealing with these transportation problems the purpose is to reach practical justice. The Chicago rate is so much per hundred pounds, and would vary with the number of pounds contained in each car. This terminal charge is a definite amount per car. It would, therefore, be impossible to exactly offset the terminal charge by any corresponding reduction in the rate per hundred pounds. The terminal carrier at Chicago, as the case shows, receives and retains the entire amount of this terminal charge. Assuming, therefore, that this company was already compensated for this service, it now receives and retains just $1 too much per car. The only method by which absolute justice can be done is to compel the carrier to desist from exacting

this sum. Surely the fact that the railroad company is already receiving pay for this service is good ground for holding that a second charge is unreasonable." (Rec., 52, 53.)

It will be seen that the Commission recurs all the time to its notion that there is a case of double charge for the same service—which this court has declared on the tariffs in force since June 1, 1894, is not the case. Under their tariffs appellees are not paid one penny for the terminal service of getting stock to the Union Stock Yards, except as they may be paid through the collection of the terminal charge.

It will not do to admit, as the Commission itself admits, that the faulty charge (if anywhere) is in the flat Chicago rate, and not in the terminal charge, and then to attempt what the Commission calls "practical justice" by leaving the flat Chicago rate (which is asserted to be wrong) unchanged, and making an offsetting change in the terminal charge (which the Commission admits to be right). This will not do, for the following reasons:

(1) We have seen (point V) that the flat or general Chicago rate is not assailed iu this proceeding. The issue and the evidence before the court concern only the propriety of the terminal charge.

(2) Whatever the Commission may attempt in the way of "practical" but not "abstract" justice, this court is not in the habit of righting one wrong by doing another.

(3) As a matter, too, of "practical justice," it will not do to take off from the terminal charge, though its amount is reasonable, a sum sufficient to balance the alleged unreasonableness of the flat Chicago rate. As stated by the Commission, appellees alone receive the terminal charge and do the work by which the terminal charge is earned. The flat Chicago rates, however, over

a very large part of the live stock shipping region, are joint rates made and shared by appellees with numerous other carriers who were originally defendants in this proceeding, but whom the Commission dismissed from the proceeding because they did not participate in the terminal charge. This dismissal of the other carriers than appellees from the case was entirely erroneous, if the flat or general Chicago rates are too high; and the attempt to correct the flat Chicago rates by reducing the terminal charge makes appellees bear the burden of the entire reduction, while a reduction of the flat Chicago rates would fall, and (if those rates are wrong) ought to fall, not on appellees alone, but proportionately upon the other carriers participating in those rates, whom the Commission dismissed from the proceedings.

(4) The Commission's order is also improperly framed, if the terminal charge itself be reasonable, and there be unreasonableness only in the Chicago rates. In such case the order ought not, at any rate, to condemn the terminal charge, except so long as the Chicago rates remain as high as they were May 31, 1894. The Commission's order as actually made, however, forbids collection of the terminal charge, however much the general Chicago rates may be reduced.

The result of the Commission's arguments is therefore (like the requirement of the facts found by the Commission) to place the reasonableness of the terminal charge beyond question.

VII.

NO CLAIM CAN BE MADE THAT THE TERMINAL CHARGE CONSTITUTES AN UNDUE PREJUDICE AGAINST CHICAGO, BECAUSE THE COMMISSION HAS ITSELF FOUND THAT IT IS NOT, UNLESS IT IS UNREASONABLE, (AND THEREFORE THE CASE REDUCES TO A QUESTION WHETHER THE AMOUNT OF THE TERMINAL CHARGE IS TOO GREAT FOR THE SERVICE FOR WHICH IT IS CHARGED); AND BECAUSE THE COMMISSION'S ORDERS, HERE SOUGHT TO BE ENFORCED, CONDEMN THE TERMINAL CHARGE ABSOLUTELY AS UNREASONABLE, NOT AS A DISCRIMINATION.

Very little need be said on this point. The Commission itself has disposed of the matter, and on the hearing in the Circuit Court and in the Court of Appeals its counsel did not contend that the terminal charge is unlawful unless it is a second charge levied for a service for which the ordinary Chicago rate itself pays, or unless it is inherently unreasonable. Nor in the brief for the Commission in the Court of Appeals or in this court is the terminal charge argued to be an undue prejudice to Chicago, unless it is faulty in itself for one or the other of the same two reasons. We shall therefore merely indicate that the question of discrimination is not before the court, and refer finally to the evidence in the Commission's findings showing that the terminal charge works no undue prejudice in fact.

1. The express finding of the Commission that the terminal charge is not discriminatory unless unreasonable is given in full in our Statement of Facts (pp. **12, 13,** *ante;* Rec., 38; 54, 55.)

We refer to our previous quotation of this finding, instead of repeating it here.

2. The Commission's order forbids the terminal charge absolutely, and therefore is not such an order as it ought to be if based upon a finding of discrimination. If the trouble with the terminal charge were that it is wrong, not *per se*, but only in relation to appellees' charges elsewhere, then the order ought to give appellees the option to make the relation right by altering such other charges while retaining the terminal charge. The order should, in that case, prohibit the terminal charge unless appellees should now or hereafter (1) lower the general Chicago rate, or (2) raise the rates to other live stock markets, or (3) impose a like terminal charge at such other markets. Any one of these three courses would cure the supposed discrimination. The order as made, however, and as the court is asked to enforce it, prohibits the terminal charge absolutely under any circumstances, and however the relation of rates between Chicago and other live stock markets may at any time be altered.

We called attention to this feature of the Commission's order in our argument on point I (*ante*, pp. 27, 28).

In the case of *Detroit, G. H. & M. Ry. Co.* v. *Interstate Commerce Commission*, 74 Fed. Rep., 803, the Commission made an order which, though founded upon discrimination between two different localities, absolutely prohibited the discriminating charge, and the Circuit Court of Appeals held the order erroneous, because not allowing the carrier any liberty to remove the discrimination in any other way. The court said:

> "From what has been already ruled, it is apparent that even if the Commission had established by its inquiry an abuse to be remedied, the order it gave was not a proper one, and should not be enforced. Large as its powers may be, and plenary as may be the authority of the court to enforce, by mandatory injunctions or otherwise, obedience to its orders, its powers are those of regulation, and not construction or re-

construction. *Interstate Commerce Commission* v. *Baltimore & O. Ry. Co.*, 43 Fed. Rep., 37, 50, and 145 U. S., 263. And now see *Cincinnati, N. O. & T. P. Ry. Co.* v. *Interstate Commerce Commission* (Oct., 1895), 16 Sup. Ct., 700. This is, as the Commission has made it, a dispute about discriminating rates, and the easy remedy on such a complaint is readjustment of the rates to cover the discrepancy. As was said in one of the cases we have cited, the method of redress by readjusting rates must always be left open to the choice of the company, at least in the first instance; and in the St. Louis case, *supra*, the Commission adopted that course, and made the proper order. *Here was an arbitrary and peremptory order to abandon the accessorial cartage at Grand Rapids, without regard to any rates, or without option as to readjustment of them, the defendant company not even being allowed the alternative of establishing a like service at Ionia.* It is, in its nature, not a regulation of commerce, so much as an interference with the rights of property and its use, which possibly even Congress could not, in this way, prohibit. At all events, it is an attempted exercise of a legislative power which Congress has not, we think, conferred upon the Commission." (pp. 840–841.)

And, concerning a claim that a certain rate had been found inherently unreasonable, this court said:

"As the Circuit Court only affirmed the order of the Commission, which directed the carriers to desist from charging a greater compensation for the shorter haul to Chattanooga than for the longer haul to Nashville, there is no room for the conclusion that it found affirmatively that independently of the charge to Nashville the rate to Chattanooga was *per se* unreasonable. For, of course, a decree which ordered the carriers to desist from charging a greater compensation for the lesser than for the longer haul, would be in no way responsive to the conclusion that the rate for the lesser distance was unreasonable in and of itself."

East Tennessee, etc., Ry. Co. v. *Interstate Commerce Commission*, 181 U. S., 1, 23.

In the same case it was again said:

> "The decree which was entered, however, did not declare the rates charged to Chattanooga to be unreasonable, but simply affirmed the order of the Commission directing that no greater sum be charged for the carriage of freight to Chattanooga, the shorter, than was exacted to Nashville, the longer, distance. As we have already shown, such a decree is not responsive to the conclusion that the rates to Chattanooga were in and of themselves unreasonable, since the right to continue to exact them was sanctioned, provided the traffic to Nashville was either abandoned or the rate to Chattanooga made the same as to Nashville." (p. 26.)

In like manner in this case, the order of the Commission is *not responsive* to any claim of undue prejudice to Chicago, through alleged wrong relation of its rates to the rates enjoyed by other live stock markets.

3. The facts found at length by the Commission, and on which the Commission was led to the conclusion that the terminal charge constitutes no discrimination, if otherwise justifiable, amply bear out that view; and would induce the court to negative any claim of unjust discrimination, even if the Commission had not already done it. (Rec., 36–38.)

It may be repeated here that appellant's argument, founded on the claim that the total cost of transporting live stock from the various shipping points to the Union Stock Yards at Chicago has been increased since May 31, 1894, is no more valid upon the question of discrimination than it is upon the point of reasonableness. That argument has already been fully considered and shown to rest upon the two false premises that all the general rates to Chicago were exactly right on May 31, 1894, and that no reduction of those rates has been made since June 1, 1894. We may add, in the present connection, that it rests upon

a further premise (which likewise is assumed without any evidence whatever) that all the rates from all shipping points to the other live stock markets than Chicago were exactly right on May 31, 1894, viz., the rates from all shipping points to Sioux City, Omaha, St. Louis, St. Joe and Kansas City. We likewise showed that the argument of appellant (even if all these premises are admitted for the sake of argument) leads only to the conclusion that the ordinary Chicago rate—not the terminal charge—has been increased from what it was on May 31, 1894. We will not repeat our argument on that point; but it is just as pertinent here as it was concerning the reasonableness of the terminal charge. (See pp. 83–90, *ante*.)

VIII.

THE INTERSTATE COMMERCE COMMISSION IS NOT EMPOWERED TO ADMINISTER THE ANTI-TRUST ACT, AND THEREFORE COURTS CANNOT ADMINISTER THAT ACT, IN PROCEEDINGS UNDER SECTION 16 OF THE INTERSTATE COMMERCE LAW TO ENFORCE THE COMMISSION'S ORDERS. NOR IS ANY VIOLATION OF THE ANTI-TRUST ACT CLAIMED IN THE PETITIONS TO THE INTERSTATE COMMERCE COMMISSION, IN WHICH THIS CONTROVERSY ORIGINATED, OR FOUND BY THE COMMISSION TO HAVE OCCURRED, OR SHOWN BY ANY FACTS IN THE RECORD TO EXIST. FURTHER, IF THE TERMINAL CHARGE HAD BEEN ESTABLISHED BY AN ARRANGEMENT BETWEEN APPELLEES IN ILLEGAL RESTRAINT OF COMPETITION, THAT WOULD BE NO REASON FOR REDUCING THE AMOUNT OF THE CHARGE, IF $2 IS NOT AN UNREASONABLE AMOUNT.

1. The Commission itself has lately decided that it is not empowered to administer the Anti-Trust Act.

Spriggs v. *B. & O. R'y. Co.*, 8 Interstate Commerce Reports, 443 (No. 9).

2. The functions of the Commission are limited to the administration of the Interstate Commerce Act by the express terms of the statute. The Commission was created only for that purpose.

The Anti-Trust Act, on the other hand, provides for its own enforcement by the courts—not by the Interstate Commerce Commission. Under Section 4 of the Anti-Trust Act "the several Circuit Courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act"; and by Section 7 any person injured by violations of the act "may sue therefor in any Circuit Court in the United States."

2 Sup. U. S. Rev. Stats., 763.

Of course, in proceedings to enforce orders of the Commission, the courts cannot entertain complaints that could not have been made to the Commission.

3. No charge of violation of the Anti-Trust Act was made in the pleadings before the Commission, or in the petition to the Circuit Court.

4. No violation of the Anti-Trust Act is found by the Commission, or is shown by any facts in evidence, or is even suggested in the Commission's reasoning. The claim of such violation is only an exhibition of ingenuity on the part of counsel. It is based on the statement of the Commission that "on June 1, 1894, these defendants, by concerted agreement among themselves, increased the rate $2 per car." (Rec., 50.) That is all the Commission said about any "agreement"; and the connection in the findings will show how little the Commission had any violation of the Anti-Trust Act in mind. Where there is competition no railroad can make and keep a charge, however low, if competing roads make a lower one. In a certain sense, therefore, there must always be concert

among railroads, but that is a far different thing from agreements intended as binding obligations (*i. e.*, contracts), whereby the competitors agree not to discontinue or reduce rates. No such contract is found to have been made in this case, or is charged in the pleadings, or is shown by any evidence.

Counsel's other prop for their cry of unlawful combination is found in the fact that the $2 tariffs were, many of them, filed with the Interstate Commerce Commission through the "Western Freight Association." Is there anything unlawful in that? Filing tariffs is an act *required* by law, instead of being unlawful; and it may be done through any agent whatever. It may relieve counsel, however, to recall (as they have not stated) that each of the appellee companies likewise filed these $2 tariffs directly for itself, beside the filing through the Association.

No evidence whatever was received by the Commission or Circuit Court on the subject of combination among appellees.

5. Even if a rate is established by contract in violation of the Anti-Trust Act, that furnishes no reason why the Commission or the courts should require a lower rate to be made, if the existing rate is reasonable in amount. The pains and penalties imposed by the Anti-Trust Act might possibly in such case be inflicted; but no lower rate could be ordered, because it would necessarily be less than reasonable. No amount of conspiracy, combination, trust-building or other thing known by any vituperative epithet, will require work to be done—whether by a railroad or anyone else—for less than a reasonable charge.

Chairman Knapp, of the Interstate Commerce Commission, recognized, in his opinion in the cited case of

Spriggs v. *B. & O. R'y Co.*, that a reasonable rate is not to be reduced because established through an unlawful combination. He said:

> "Assuming that the rate which has been complained of is shown to be maintained by a forbidden contract or combination, if that rate is in fact just and reasonable within the meaning of the Act to Regulate Commerce, what warrant has the Commission for condemning that rate, and where is its authority for requiring the carrier to cease and desist from charging it?" (p. 457.)

IX.

THE CIRCUIT COURT RULED CORRECTLY IN ITS EXCLUSION OF EVIDENCE AT THE HEARING BELOW.

Counsel for appellant do not argue any of the errors assigned in the way of exclusion of evidence by the Circuit Court. We shall advert to them very briefly.

1. It is said the Circuit Court was wrong "in refusing to permit the complainant to prove by the witness Chappell that the general managers of the railroads, including these defendants, entering the City of Chicago from the west, entered into a combination in restraint of trade, and that the $2 terminal charge was made and promulgated by such combination, and that at the time such $2 charge was imposed it was in addition to the old rate, and that the old rate stood as it was previously." (Appellant's Brief; Assignment 7; p. 13.)

This assignment really relates to two different rulings of the Circuit Court, concerning two very different questions, viz., the matter of combination and the meaning of appellees' tariffs. The assignment being entire, it must fail if the Circuit Court was right in either ruling. Both rulings, however, were manifestly correct.

(1) Concerning the alleged combination:

(*a*) Complainant offered no such testimony as the assignment mentions. The ruling of the court was on this question:

> "Q. Now, I ask you, Mr. Chappell, to state to the court who composed the General Managers' Association that you referred to in that testimony?" (Rec., 249, 250.)

While Mr. Day, of counsel for appellant, argued on lines suggesting the assignment of error, no offer of testimony was made beyond the just quoted question (Rec., 250). The answer to the excluded question could not have been material.

(*b*) Even if appellant had offered such testimony as the assignment describes, it should have been excluded, because such testimony would be irrelevant and immaterial, for the reasons set forth in Point VIII, *ante*.

(2) Concerning the question to Mr. Chappell about the tariffs, which was as follows: "I will ask this question—one of my colleagues has suggested that it is pertinent to your Honor's suggestion, and then I will ask Mr. Chappell to stand aside. At the time that you imposed this $2 charge, I will ask you to state whether or not that was in addition to the old rate?" (Rec., 250.) This question was an attempt to have Mr. Chappell construe written tariffs; and their proper construction was a question of law for the court.

2. The Circuit Court is claimed also to have erred "in refusing to permit complainant to introduce in evidence upon the trial of said case the testimony and exhibits taken before the Interstate Commerce Commission." (Appellant's Brief, Assignment 8, p. 14.) The Interstate Commerce Act makes the findings of the Commission *prima facie* evidence, but the act gives no such character to the evidence taken before the Commission.

X.

NEITHER THE CIRCUIT COURT NOR THIS COURT HAS JURISDICTION, IN A PROCEEDING LIKE THE PRESENT, TO MODIFY THE ORDERS OF THE COMMISSION SOUGHT TO BE ENFORCED. THE ONLY QUESTION WHICH SUCH A PROCEEDING BRINGS BEFORE THE COURTS IS WHETHER THE ORDERS OF THE COMMISSION SHOULD BE ENFORCED AS MADE BY THE COMMISSION.

This follows from the fact that the foundation of the Commission's application to the courts must be that defendants have disobeyed a lawful order of the Commission, and thereby have been guilty of unjustified disobedience. If the order as made by the Commission is wrong, so that disobedience to it is permissible, then the disregard of the Commission's order affords no right to bring defendants into court. Hence, the success or failure of the Commission before the courts must depend upon the propriety of its orders, as actually made, and in the form which the defendants have disregarded.

The same conclusion results from the statement of the Interstate Commerce Act that the application of the Commission to the courts is only "to enforce" the Commission's orders. The Act confers upon the courts no power to make a new order in place of the Commission's order. The United States Courts of Appeals have often adjudicated this point.

Interstate Commerce Commission v. *Delaware, L. & W. R. R. Co.*, 64 Fed. Rep., 723.

Detroit, G. H. & M. Ry. Co. v. *Interstate Commerce Commission*, 74 Fed. Rep., 803.

Farmers' Loan & Trust Co. v. *Northern Pacific Ry. Co.*, 83 Fed. Rep., 249.

In the former case Judge Wallace said:

> "The court cannot substitute, for an order actually made, one such as the Commission might or should have made, or such as the Commission intended to but failed to make. This court has no revisory power over the orders of the Commission. Its function in a proceeding like this is merely to inquire whether the respondents, the common carriers, have refused or neglected to perform any lawful order or requirement of the Commission. It cannot undertake to decide whether the respondents have violated one which the Commission might have lawfully made." (p. 723.)

In the latter case the court declared:

> "Nor was there any power in the Circuit Court to modify or change the order of the Commission. Whatever may be the plenary power of a court of equity to command, at the suit of those who are injured, the performance of any duty arising out of a contract or statutory obligation, the jurisdiction it was exercising here is strictly special and statutory, and is limited, as all special jurisdiction is, to the precise power conferred by the Interstate Commerce Act, which is only to compel obedience to the 'lawful order' of the Commission. It has not been granted any broader power to exercise the authority of the Commission itself by substituting a new regulation or order of its own, or modifying that which the Commission has given. It is purely an auxiliary jurisdiction." (P. 841.)

Conclusion.

The judgment of the Circuit Court of Appeals affirming that of the Circuit Court should itself be affirmed.

Respectfully submitted,

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Robert Dunlap,
Of Counsel for Appellees.

Supreme Court of the United States.

No. 154.—October Term, 1901.

The Interstate Commerce Commission, Appellant, *vs.* The Chicago, Burlington and Quincy Railroad Company et al.	Appeal from the United States Circuit Court of Appeals for the Seventh Circuit.

[June 2, 1902.]

Mr. Justice White delivered the opinion of the Court.

This record requires us to determine whether the court below rightly refused to enforce an order of the Interstate Commerce Commission, by which it was found that an alleged terminal charge, made by the defendants in error, for the delivery of live stock to the stock yards in Chicago, was unjust and unreasonable, and hence violative of the act to regulate commerce. To avoid the confusion which must be engendered by considering a number of irrelevant issues and to reach the single question to which the controversy is reducible, it is essential to state the facts, which are uncontroverted, concerning the making of the charge in question, and to bear in mind the results of a controversy relating to such exaction, which arose when it was first imposed by the railroad companies.

Prior to 1865 there were four different places in the city of Chicago at which live stock shipped to that city was delivered and marketed. The railroads by which such live stock was brought into Chicago were accustomed to deliver at any one of these four points as directed by the shipper, and no distinct terminal charge was made, the charge, if any, for the terminal services being embraced in the through rate exacted for carriage from the point of shipment to the place of delivery. In 1865 a corporation was formed, called the Union Stock Yards and Transit Company, which will be hereafter referred to as the Stock Yards Company. Under its charter this corporation was given the right to construct the necessary buildings and conveniences for the receipt, keeping and marketing of live stock. The corporation was given power to construct tracks connecting its facilities with the different lines of railway entering Chicago, aod it was provided that when such tracks were constructed the Stock Yards Company might engage in the business of transporting stock and other freight over these tracks on its own account, or it might lease the privilege to do so upon such terms as might be deemed best. The facilities and the tracks were constructed, and it consequently came to pass

that the general market for live stock in Chicago was transferred from the places at which such business had been previously carried on to the establishment of the Stock Yards Company. Leaving aside all question of charges on freight, other than live stock, from the incipiency of the opening of the stock yards in 1865 down to June, 1894, the railroads bringing in live stock to Chicago were accustomed to use the tracks of the Stock Yards Company for the purpose of delivering carloads of cattle, and for the use of these tracks by the various companies, for the purpose above stated, no charge for trackage or otherwise was made against the railroads by the Stock Yards Company, except a small sum for the unloading of the cattle. During these thirty years the railroads did not divide their rates by separately charging for carriage from the point of shipment to Chicago and for terminal services rendered at Chicago, but asked one rate from the place of shipment to delivery at the stock yards.

In June, 1894, the Stock Yards Company imposed a trackage charge for carrying in carloads of cattle to the stock yards and in bringing the empty cars out. The railroads, therefore, became subject to an additional burden, the amount of which depended upon the distance which each road was obliged to carry its carloads of stock in going in and coming out over the tracks belonging to the Stock Yards Company. The situation of the various roads was such that no one of them in consequence of this new exaction paid less than 80 cents per car, that is, 40 cents each way, and none paid more than $1.50, that is, 75 cents each way. The railroad officials thereupon entered into an agreement that each road would impose a terminal charge of $2 upon each car of cattle taken into the stock yards. A joint circular was issued on behalf of the railroads, informing shippers on the subject, the circular being as follows:

"On and after June the 1st, 1894, a terminal charge of $2 per car will be made in addition to the Chicargo rates as shown in the tariffs of the Western Freight Association on live stock and other freight received from or delivered to the stock yards or industries located on the tracks of the Union Stock Yards Railway, the Indiana Line Railway and the Northern Indiana Railroad."

The provisions of this circular were besides separately reiterated by the various railroads concerned in the agreement, and in their posted tariffs, as in those filed with the Interstate Commerce Commission, a memorandum was made showing the additional charge substantially in the form above stated. In other words, because the Stock Yards Company imposed on the railroads a charge for the use of its tracks, varying between a minimum of 80 cents per car of cattle to a maximum of $1.50 per car, the railroads immediately exacted a terminal charge on each car of $2.

One of the roads which imposed this terminal charge was the Atchison, Topeka and Santa Fe. It was in the hands of a receiver appointed by the

Circuit Court of the United States for the Northern District of Illinois. Keenan, a shipper, who carried on his business at the stock yards, refused to pay the added charge, and the receiver consequently declined to deliver to him a consignment of cattle. Keenan thereupon petitioned the court to instruct its receiver to make delivery of the cattle without the payment of the charge in question. Several persons interested in the receipt of cattle at the stock yards intervened, and prayed the court to make an order forbidding the receiver from exacting the additional $2. The Circuit Court granted the relief prayed for. It held that it had been settled in *Covington Stock Yards Co.* v. *Keith*, (139 U. S. 128,) that a carrier could not lawfully divide his charge so as to separate the sum to be paid for terminal services from that exacted for the through carriage, unless the terminal services embraced some character of service not by operation of law included in the contract of carriage. (64 Fed. Rep. 992.)

The case was taken to the Circuit Court of Appeals, where the decree of the Circuit Court was reversed. That court thought that the Circuit Court had misapplied the case of *Covington Stock Yards Co.* v. *Keith*, and, interpreting that case, held that it was not authority for the proposition that a carrier in a case like the one before the court could not divide its rate so as to separate the terminal charge from that for carriage from the point of shipment to the place of delivery. The court held that it was disclosed by the record that Keenan was engaged in business at the stock yards, that the cattle shipped to him were intended for delivery there, and hence the contract contemplated such delivery beyond the rails of the final carrier; that it was therefore immaterial whether such carrier had facilities of its own for delivering cattle at any other place than the stock yards, because even if such other facilities had existed they would not have been used under the contract, since it contemplated that the cattle were to be delivered at the stock yards and at no other place.

The court concluded its opinion as follows:

"It is not suggested, assuming any such charge as is here in question to be legal at all, that the amount is unreasonable. The contention that the carriers must move cattle from their lines of road over the track of the Stock Yards Company to the stock yards, without compensation other than as contained in their charges for hauling to points on their respective lines in Chicago (and this is what the claim of these appellants amounts to), is invalid."

Some months after the decision of the Circuit Court of Appeals the Cattle Raisers' Association of Texas, an organization composed of owners and raisers of cattle in Kansas, Montana, North and South Dakota, Texas and the Indian Territory, filed a petition before the Interstate Commerce Commission against the Fort Worth and Denver City Railway Company and its receiver, and various other railroad companies, and against the

Stock Yards Company. The petition in substance complained that the terminal charge of $2 per each car of stock carried to the stock yards was unjust and unreasonable, was a discrimination against Chicago and in favor of other points to which cattle were shipped from the same territory, because at such other points no such terminal charge was exacted. In view of the method of charging adopted by the Stock Yards Company as to dead freight passing over its lines from the lines of many railroads entering Chicago the terminal charge above referred to was, moreover, alleged to be a discrimination against live stock as a species of traffic and in favor of dead freight. Subsequently the Chicago Live Stock Exchange, an association of commission men and raisers and owners of cattle, intervened, and attacked the terminal rate on substantially the grounds set out in the petition just referred to. The defendant railways answered. It suffices to say that the answers asserted that the terminal rate complained of was just and reasonable, and the discrimination alleged was denied. It was averred that for years previous to the imposing of the terminal rate complained of the carriers, under their contracts to carry and deliver cattle in Chicago, had delivered such cattle to the stock yards without making any charge therefor, as in effect the rate asked for the carriage and delivery to Chicago of cattle *did not include any terminal charge whatever*, and such service was hence rendered gratuitously; that owing to the imposition in 1894 by the Stock Yards Company of the charge for trackage the carriers had exacted the $2 per car, which was only a just and reasonable equivalent for the cost incurred and service rendered in delivering the cattle to the stock yards. It was further alleged that at the time the terminal charge was imposed the rate to Chicago for cattle from the various points referred to in the complaint was unreasonably low and the addition of the terminal charge complained of was, in any event, but a just and reasonable addition to the through rate. It was, besides, alleged that such increase had not only been notified to the public by the circular issued in the name of the various railroads previously referred to, but had also been included in the rate sheets of the various railroads filed with the Interstate Commerce Commission in accordance with law. The Atchison, Topeka and Santa Fe Railroad, moreover, pleaded the decree rendered in the Keenan case, and averred in effect that such decree conclusively established the right to make the terminal charge in question. The various defendants, moreover, moved to dismiss the Chicago Live Stock Exchange from the proceedings for reasons not necessary to be stated.

After hearing the Commission filed its report. The motion to dismiss the intervention of the Chicago Live Stock Exchange was denied. The Stock Yards Company was dismissed from the cause on the ground that it was not a common carrier subject to the act to regulate commerce.

The facts as found by the Commission concerning the terminal charge have been in substance given in the previous statement, and omitting for the moment reference to a finding of the Commission as to a reduction made by the carriers in the through rate after the terminal charge in controversy had been imposed, the conclusions reached by the Commission are embodied in the following summary:

First. Although the decree of the Circuit Court of Appeals in the Keenan case was held not to constitute *res adjudicata* because of a want of identity of the parties concerned in the Keenan case and those involved in the case before it, the Commission, nevertheless, declared that it was its duty to follow and apply to the case before it the legal principles announced in the Keenan case. The Commission, therefore, announced that it recognized that each and all of the defendant carriers were entitled to divide their rates by making one separate and distinct charge for the carriage from the point of shipment to Chicago, and another separate and distinct charge for terminal services in Chicago beyond their own lines. This principle, however, the Commission found not to be decisive of the case before it, since, even although the right to divide the rate was fully recognized, the question remained whether the defendant carriers had in fact divided their rates and whether the charge complained of was just and reasonable.

Second. Coming to consider the two questions just stated, the Commission held that the action of the carriers in giving notice to the public of the imposition of the $2 terminal charge and the filing of the rate sheets with the Commission as required by law, did not constitute a division of the rates so as to separate the charge for carriage to Chicago from the charge for terminal services at that point, but amounted simply to a retention of the aggregated through rate existing before the $2 terminal charge was asked, and the adding of this $2 charge to the previous rate. It was found as a matter of fact that there was no evidence tending to show that the previous through rate was either unreasonably high or unreasonably low, and therefore the presumption was that the through rate prevailing prior to the imposition of the $2 charge was just and reasonable.

Third. Considering the cost of delivery to the stock yards over the rails of the Stock Yards Company, including the sum paid for trackage and all other expenses, the Commission found as a matter of fact that $2 per car would be just and reasonable. A reference to this subject, found in the report of the Commission, is excerpted in the margin.* To remove all possible

* The intervenor conceded upon the trial, and the complainants did not seriously question, that the amount of this charge was reasonable if, under the circumstances, the charge should be imposed. Before the close of the testimony the several defendants were requested by the Commission to furnish statements showing the

doubt as to the fact the Commission, in its opinion, on a rehearing, to which opinion we shall hereafter advert, said:

"The defendants were proceeding to show by testimony in each case that the actual cost to them of transporting these carloads of live stock, including the trackage charge and the cost of unloading, was equal to or in excess of $2. Thereupon it was suggested by the Commission, admitted by the intervenor, and at first partly admitted by the complainant, that the cost of service, including the trackage charge and the cost of unloading, was sufficient to justify the imposition of this terminal charge, provided, *under the circumstances of the case*, it could properly be imposed. We understand that the defendants are given the full benefit of this in the report and opinion already filed. To remove all doubt upon that subject, however, if it is not clearly found, we now find that, looking entirely to the cost of service, and including as a part of that cost the trackage charge paid the Union Stock Yards and Transit Company and the unloading charge paid that same company, the amount of this terminal, if, under the circumstances of this case, it is proper to impose the charge is reasonable. If any modification of the present findings is necessary, they are hereby modified to that extent."

The fact, however, that the terminal charge of $2 was intrinsically just and reasonable, was held by the Commission not to show that such charge was just and reasonable "under the circumstances of the case," for the following reasons: As for many years the carriers had delivered to the stock yards for the through rate prevailing from the point of shipment to the point of delivery, they could not be assumed to have gratuitously performed the service of delivery. It was, therefore, held that pay for such service must be presumed to have been embraced in the through rate. The through and reasonable rate previously existing having been thus found to have embraced the cost of the terminal service, the Commission decided that it was

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actual or estimated expense to them in each case of making delivery from their several tracks to the Union Stock Yards.

Such statements have been filed, and they make the following showing:

Illinois Central Railroad, via 75-cent trackage route	$2 23	
Via 40-cent trackage route	1 65	
Average		$1 94
Chicago, Burlington and Quincy Railroad		2 25
Chicago and Alton Railroad		2 05
Chicago, Milwaukee and St. Paul Railway, via one route	2 67	
Via other route	2 25	
Average		2 46
Atchison, Topeka and Santa Fe Railway		2 28
Chicago Great Western Railway (average of 10 cars to train)		2 20
Chicago and North-Western Railway		3 34
Wabash Railroad		1 86
Chicago, Rock Island and Pacific Railway		1 65
Total via nine lines		$20 03
Average		2 22

unjust and unreasonable to add to the charge for terminal services, thus previously exacted, the arbitrary sum of $2 per car, because the Stock Yards Company had imposed for the first time, in 1894, an average charge of $1 per car. In other words, the $2 terminal charge, although it was intrinsically reasonable when considered alone, became unreasonable because it was an addition to the terminal charge necessarily embraced in the pay for terminal services which had been included in the through rate existing for so many years.

The opinion of the Commission leaves no room for doubt that such were its views on the subject. Thus stating the question which required to be decided, it was said: "Whether they (the carriers) ought to make the charge they do, or any charge, or whether the charge for delivery is already fairly included in the rate, is a proposition of fact for consideration." Again, referring to the matter, the Commission said: "We do not believe that these carriers should be allowed to add an arbitrary charge to the Chicago rate, for doing a thing which they for thirty years have said was included in that rate, and which we believe, considering the manner in which rates are made up and in which this rate has been made up, ought to be included in the rate;" and the following excerpts make the same thought more clearly manifest: "We think and find that the Chicago rate on May 31, 1894, included, as it had included for the last thirty years, a delivery and unloading of the stock at the Union Stock Yards, and that rate, upon the record in this case, was a just and reasonable one." Further, in calling attention to the fact that the $2 terminal charge for the service of delivery at the stock yards would be just and reasonable, "if that service were performed by some independent agency," the Commission pointed out that the charge was not just and reasonable when made by the defendants, "because they were already receiving compensation for this service, they ought not to charge for it the second time." Further, it was said: "It is unreasonable to impose this terminal charge for the reason that the rate to Chicago already includes that charge;" and the conclusion is pointedly summed up by the observation: "Surely the fact that the railroad company is already receiving pay for this service is good ground for holding that a second charge is unreasonable."

The finding of the Commission was that the $2 additional terminal charge was unjust and unreasonable, in so far as that charge exceeded the sum which the carriers were actually obliged to pay in consequence of the trackage charge imposed by the Stock Yards Company. In other words, the Commission held that the average sum which the defendants were obliged to pay for the trackage charge was $1, and that this sum might be added without causing the existing rate to become unreasonable.

A reargument of the case was permitted. The Commission adhered to its original conclusions, and in addition held that as the terminal charge

violated the statute, because it was unreasonable, it therefore operated a discrimination against Chicago, and hence was repugnant to the act to regulate commerce in this additional respect. The reasons by which the Commission was controlled were reiterated in an opinion which so clearly expresses the views entertained by it, which we have previously summarized, that an extract from the report of the Commission on the rehearing is excerpted in the margin.*

An order was issued by the Commission to carry out its conclusions. In substance the order commanded the defendants whose lines of railway entered the city of Chicago to desist, on and before a named date, from charging, demanding, collecting or receiving, in addition to their regular published transportation charges, the sum of $2 per carload of

*"The Commission, itself did, however, state upon the hearing at various times, in terms upon which the defendants were justified in relying, that no question could be successfully made as to the reasonableness of this charge (the terminal charge in question) in certain aspects. Just exactly the scope of that intimation can be understood by referring to the circumstances under which it was given. The defendants were proceeding to show by testimony in each case that the actual cost to them of transporting these carloads of live stock, including the trackage charge and the cost of unloading, was equal to or in excess of $2. Thereupon it was suggested by the Commission, admitted by the intervenor, and at first partly admitted by the complainant, that the cost of service, including the trackage charge and the cost of unloading, was sufficient to justify the imposition of this terminal charge, provided, under the circumstances of this case, it could be properly imposed. We understand that the defendants are given the full benefits of this in the report and opinion already filed. To remove all doubt upon that subject, however, if it is not clearly found we now find that, looking entirely to the cost of service and including as a part of that cost the trackage charge paid the Union Stock Yards and Transit Company and the unloading charge paid that same company, the amount of this terminal, if, under the circumstances of this case, it is proper to impose the charge, is reasonable. If any modification of the present findings is necessary they are hereby modified to that extent. That finding must, however, be carefully read in connection with the other facts in the case, and the conclusion of the Commission that the imposition of this terminal charge is reasonable. The defendants say it was admitted that this charge was reasonable, 'provided any charge could be legally made for the the terminal service.' The intimation of the Commission was as indicated in the above extract from the record, 'that if this charge was proper to be imposed, it was a reasonable charge.' The reason for the conclusion of the Commission is to be found in the distinction between these two statements. What the Commission passed upon finally was, not whether a terminal charge of this sort could be legally made—that had been already determined by the courts—but whether this particular charge could be properly imposed under the circumstances of this case. To avoid misapprehension, we will restate here the grounds for our decision, and for that purpose we confine attention to this rate as it existed on May the 31st and June the 1st, 1894. On May the 31st there was in

live stock, as compensation for terminal services rendered in making delivery thereof at the yards of the Union Stock Yards and Transit Company in the city of Chicago. Embodied in the order was the following recommendation:

"That said defendants be, and they severally are, hereby recommended not to charge, demand, collect or receive in excess of $1 per carload as compensation for terminal or switching services rendered in the delivery of live stock at the yards of the Union Stock Yards and Transit Company in said city of Chicago, which said sum of $1 per carload as compensation for such terminal or switching services is found and declared in and by said report and opinion to be just, reasonable and lawful."

In its opinion on the rehearing the Commission pointed out the reasons which caused it to recommend that each railroad exact only $1 for the additional terminal charge instead of the actual sum which the railroads

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effect a certain rate on live stock from various points to Chicago, and that rate, upon the record in this case, must be taken to be a just and reasonable one. The defendants intimate in their answer that this rate has been forced down until it was too low, and something was said in the proof looking in the same direction. Upon the other hand, the complainants started in to prove that the rate at that time was too high, but as is found by the case both these claims were virtually abandoned. There is nothing in the record before us to show that the rate was other than a right one, and we assume that on May the 31st the rate in effect was just and reasonable. Now, just what did this live stock rate to Chicago include? The defendants insisted on the reargument of this case that it covered the transportation of that live stock to the point where, on its way to the Union Stock Yards, it left the tracks of these several defendants, and nothing more. The complainant insisted that that rate covered a delivery of the stock at the stock yards. We are unable to see any ground whatever for the contention of the defendants. As a matter of law, the undertaking to transport live stock from one place to another includes a delivery of the stock. Originally live stock brought to Chicago by these defendants must be delivered at any one of four different points. This was necessitated by the actual competitive conditions at that market. The railway companies for the purpose of avoiding the expense and inconvenience of this kind of delivery created the present stock yards.

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"It was entirely at their suggestion and entirely for their benefit at the outset. From the time the stock yards were constructed down to June 1, 1894, the various defendants had, by arrangement with the Stock Yards Company, the right to use the tracks of that company for the delivery of this stock at the Union Stock Yards. By the action of the various carriers that became the only place in Chicago at which live stock could ordinarily be delivered. Whenever a carload of live stock was shipped to Chicago, in the absence of special directions, it was taken to the Union Stock Yards. This was understood both by the carrier and by the shipper. No defendant had any facilities previous to June 1 for delivering live stock in any quantity at any other point than at the Union Stock Yards. Now, in view of the legal liability resting upon the carrier to make a delivery somewhere, in view of the fact that this delivery must be made at the stock yards and was habitually

were obliged to disburse for the trackage charge. The passage from the opinion referring to this subject is excerpted in the margin.*

It is to be observed that the Commission in the course of its opinion expressly recognized the right of the defendant carriers to increase their rates if they were unreasonably low. It is also to be borne in mind that

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made there, it seems impossible that the defendants, in making this rate from the point of shipment to Chicago, did not include in that rate and contemplate as a part of the service covered by that rate a delivery at the Union Stock Yards. It is absurd to say that the Chicago rate paid for the transportation of that stock up to some switch in the field, or in the city where there was no facility for a delivery, and that the transportation beyond that point was a gratuity. We think and find that the Chicago rate on May 31, 1894, included, as it had included for the last thirty years, a delivery and unloading of the stock at the Union Stock Yards, and that rate, upon the record in this case, was a just and reasonable one.

"June 1, 1894, these defendants, by concerted agreement among themselves, increased this rate to $2.00 per car. If the rate on May 31 was a just and reasonable one, the rate on June 1 was an unjust and unreasonable one, unless some new condition justified the imposition of that additional charge. We have found that to the extent of $1.00 a new condition did justify the additional charge, for the reason that then, for the first time, the Stock Yards Company exacted this trackage charge. In other words, the cost of service to the defendants was increased by just $1.00 on that day. It must follow, therefore, as a necessary conclusion, that of the increase which the defendants made, $1.00 was justifiable and $1.00 was unjustifiable. This is not, however, because $2.00 is an unreasonable charge for transporting a car to the stock yards, if that service was performed by some independent agency, but because, since the defendants were already receiving compensation for this service, they ought not to charge for it the second time. Of this proposition we have no doubt. Upon the assumption that the rate May 31 was a just one, we regard the imposition of anything above what the defendants were then compelled for the first time to pay as an unwarranted exaction and a violation of the first section of the act to regulate commerce, if it is possible to violate that section."

*"The original opinion intimates that the only logical conclusion from the reasoning there stated would be to allow each carrier to retain whatever that particular carrier is obliged to pay the Union Stock Yards and Transit Company by way of this trackage charge. That would, however, result in compelling all companies to retain the smallest amount paid, since the terminal by all routes must be the same. We understood that in allowing $1 to be retained we were virtually giving to the carriers 20 cents upon each car, but in view of the fact that many of the defendants were compelled to pay $1.50 by way of trackage charge, this seemed, on the whole, reasonable. Upon the reargument the defendants were inquired of whether they desired a modification of this order so that each one be allowed to retain the amount actually paid, and without exception they stated that they did not ask such a modification. Attention is called to this fact at this time for the purpose of showing that what is apparently an inconsistency in the conclusion of the Commission is really in favor of the defendants, and that the defendants do not for that reason desire to have that inconsistency removed."

by necessary implication arising from the opinion of the Commission it is also clear that that body likewise recognized the right of the defendant carriers under the circumstances of the particular case to segregate their rates by separating the charge made for carriage from the point of shipment to Chicago from the terminal services at that point.

The defendants, refusing to comply with the order of the Commission, that body filed a petition in the Circuit Court of the United States for the Northern District of Illinois to compel compliance. The defendants annexed and made part of their answers the responses which they had filed in the proceedings before the Commission. All the answers in effect averred the reasonableness of the charge of $2, denied the discrimination and expressly alleged that the charge in question constituted a separate terminal charge, embracing compensation for all the terminal services, and alleged that the effect of the filing of the rate sheets with the Interstate Commerce Commission and the notice given to the public concerning the charge of $2 had been to segregate the rates so as to distinguish the entire terminal charge from the through rate. It was, moreover, expressly averred that at the time the terminal charge was imposed the rates to Chicago on cattle from the points covered by the proceedings before the Interstate Commerce Commission were unreasonably low, and, in view of the outlay occasioned at Chicago in the rendering of the terminal services, the terminal charge of $2 was in any event a just and reasonable increase of the then existing unreasonably low rate.

Before the Circuit Court the Commission contented itself with introducing in evidence certified copies of the proceedings had before it, other than the evidence taken by the Commission, and with offering such evidence as competent proof in the case. Although, on objection, the court excluded the evidence in question, it was subsequently stipulated that the transcript thereof need not be incorporated in the certificate of evidence signed by the district judge, and that, notwithstanding the objections interposed, the transcript might be produced to and inspected by the Circuit Court of Appeals for any proper purpose in case such inspection was deemed allowable. The evidence introduced on behalf of the railroad companies consisted only of the circulars and tariff sheets which had been issued and filed with the Commission, promulgating the charge in question. After hearing, the Circuit Court found that such charge was just and reasonable, and entered a decree dismissing the petition. (98 Fed. Rep. 173.) On appeal, the Circuit Court of Appeals for the Seventh Circuit affirmed the decree of the Circuit Court. (103 Fed. Rep. 249.)

The court held, as to the right of the carrier to make a terminal charge, under the circumstances disclosed by the record, that the case was controlled by the ruling of the Circuit Court of Appeals in the case to which we have previously referred, (*Walker* v. *Keenan*, 73 Fed. Rep.

755,) and the reasoning in that case was expressly approved. Coming to consider the question of the reasonableness of the terminal charge, the court held as that rate, abstractedly considered, was just and reasonable, it was in the concrete also just and reasonable, because the through rate which had prevailed for thirty years, and under which the carriers had delivered to the stock yards, embraced no charge for terminal services, such service having been performed during all the years in question gratuitously. Besides, the court considered that the filing of the schedules in 1894 with a memorandum as to the terminal charge of 82 had operated the segregation of the two rates. The views of the court on this subject were thus stated in its opinion:

"Prior to June 1, 1894, the railway companies seem to have assumed this burden themselves, but at this time a trackage was imposed by the stock yards of from 40 to 75 cents each way upon every car going and returning from the tracks of the railway company to the stock yards. It is insisted that, as this is the only extra expense then occasioned, any charge beyond that was unreasonable and improper. I do not think that necessarily follows. While the imposition of this trackage charge by the Union Stock Yards was doubtless the immediate occasion for a reformation of its tariff, the railway companies were then at liberty to adopt a new schedule with relation to these terminal facilities and charge what they actually cost them."

We are thus brought to consider the issue involved, that is, the reasonableness of the rate.

As the right of the defendant carriers to divide their rates and thus to make a distinct charge from the point of shipment to Chicago and a separate terminal charge for delivery to the stock yards, a point beyond the lines of the respective carriers, was conceded by the Commission and was upheld by the Circuit Court of Appeals, no contention on this subject arises. If, despite this concurrence of opinion, controversy was presented on the subject, we see no reason to doubt, under the facts of this case, the correctness of the rule as to the right to divide the rate, admitted by the Commission and announced by the court below. This is especially the case in view of the sixth section of the act to regulate commerce, wherein it is provided that the schedules of rates to be filed by carriers shall "state separately the terminal charges and any rules or regulations which could in anywise change, affect or determine any part of the aggregate of said aforesaid rates and fares and charges." Whether the rule which we approve as applied to the facts in this case would be applicable to terminal services by a carrier on his own line which he was obliged to perform as a necessary incident of his contract to carry, and the performance of which was demanded of him by the shipper, is a question which does not arise on this record, and as to which we are, therefore, called upon to express no opinion.

We come, then, to consider whether there was a separation of the charge for carriage and the charge for the terminal services, and whether the rate—separated or aggregated, as may be found to be the case—was just and reasonable. To determine these questions, it is essential to fix the situation prior to June, 1894, at which time the increased terminal charge was first imposed. Undoubtedly prior to that date the published rate sheets of the defendants embraced only a rate from the point of shipment to Chicago, the place of delivery. There is room, even, for no pretense that there was in such schedules a setting apart of the terminal charge from the through rate. There is also no room for question that during the many years these rate sheets were in force the carriers, under their contracts to carry to Chicago, delivered carloads of cattle to the stock yards without making any charge other than that which was specified in the through rate. Under these circumstances, in the absence of proof, can it be assumed that the carriers were, for the many years in question, gratuitously performing the terminal services? That such assumption may not be indulged in results from the ruling in *Covington Stock Yards* v. *Keith*, (139 U. S. 128,) where it was decided that, as for a through to a given point, the carrier contracted to deliver at that point, the presumption was that the through rate included adequate compensation for the services rendered at the point of delivery. Applying this principle, it results that the through rate existing prior to June the 1st, 1894, certainly in the absence of proof to the contrary, must be presumed to have provided in and of itself compensation for the services rendered in making delivery at the stock yards. Did the carriers, in June, 1894, when they imposed the alleged terminal charge of 82, separate in their schedules this charge from the through rate? That is, did they divide their charges by setting apart the terminal charge embraced in their previous through rate so as to segregate it from the through rate, thus making one distinct terminal charge and another distinct through rate? The mere inspection of the schedules demonstrates that such division was not made. This is the convincing result, since the schedules did not purport to draw out from the previous through rate the sum of compensation contained therein for terminal services. On the contrary, the entire previous through rate was retained, and a memorandum was placed upon the schedules to the effect that thereafter an additional charge of 82 for delivery at the stock yards would be exacted. This was a mere addition to the sum of the terminal charge embraced in the prior through rate. We think that it cannot be said that to add an additional amount to a former charge was necessarily to divide such former charge, without holding that to add one sum to another is necessarily to divide the other. The act to regulate commerce exacts that the schedules to be printed and filed by carriers must plainly state "the places upon the railroad between which property and passengers will be

carried, and shall contain the classification of freight in force, and shall also state separately the terminal charges and any rules or regulations which in anywise change, affect or determine any part or the aggregate of such aforesaid rates and fares and charges." The purpose of this provision was to compel the schedules to be so drawn as to plainly inform of their import, was to exact that when the rates were changed the change should be so stated as not to mislead and confuse, all of which would be frustrated if the schedules relied upon were given the effect which the defendants now claim for them. And the reasons just given dispose of the contention that because it was found that the terminal charge of $2, abstractly considered, would be just and reasonable, therefore it should have been held to have been just and reasonable as applied to the case in hand. This obscures the fact that compensation for the terminal service was presumptively included in the through rate existing for so many years, and therefore, the $2 did not constitute the terminal rate, but that such rate after the $2 was imposed consisted of that sum plus the amount of compensation for the terminal service which had always been contained in, and which continued to be embraced in, the through rate.

Under the foregoing conditions, was the imposition by the railroads of the additional charge of $2 just and reasonable, measured by the criterion which the Commission adopted, that is, "under the circumstances of the case?" It needs no reasoning to demonstrate that the Commission correctly held that the mere imposition by the Stock Yards Company of a new burden, averaging $1 per car, did not justify an additional charge by the carriers of $2 per car. It is likewise equally plain that if the prior rate was just and reasonable, as the Commission found it to be, that the addition, without reason, of $1 per car, caused the rate to become unjust and unreasonable to the extent of the $1 extra.

It follows that the order of the Commission was right if its correctness depends upon the considerations previously stated. But such is not the case. In the report on the original hearing the Commission said:

"If the through rate were what was really aimed at by the complaint, then all ground of complaint has been removed since the complaint itself was filed. About October the 1st, 1896, rates on live stock from points embraced in the territory covered by this complaint to all western markets, including Chicago, were reduced five cents per one hundred pounds. This would amount to from ten to fifteen dollars per car. Therefore the Texas shipper would actually deliver his stock in Chicago for from eight to thirteen dollars per carload cheaper than he could before the $2 rate was imposed, and all the complaint asks for is the abolishment of that terminal charge. This charge is imposed by the terminal carriers at Chicago, and those carriers receive and retain the amount of that charge. The complaint is that this charge is an unlawful one; that no matter what the Chicago rate may be the addition of this particular sum to that rate is in violation of the act to regulate commerce."

In other words, it was held that the rate, which was unjust and unreasonable solely because of the $1 excess, continued to be unjust and unreasonable after this rate had been reduced by from ten to fifteen dollars. This was based, not upon a finding of fact—as of course it could not have been so based—but rested alone on the ruling by the Commission that it could not consider the reduction in the through rate, but must confine its attention to the $2 terminal rate, since that alone was the subject-matter of the complaint. But, as we have previously shown, the Commission, in considering the terminal rate, had expressly found that it was less than the cost of service, and was therefore intrinsically just and reasonable, and could only be treated as unjust and unreasonable by considering "the circumstances of the case;" that is, the through rate and the fact that a terminal charge was included in it, which, when added to the two dollar charge, caused the terminal charge as a whole to be unreasonable. Having therefore decided that the $2 terminal charge could only be held to be unjust and unreasonable by combining it with the charge embraced in the through rate, necessarily the through rate was entitled to be taken into consideration if the previous conclusions of the Commission were well founded. It cannot be in reason said that the inherent reasonableness of the terminal rate, separately considered, is irrelevant because its reasonableness is to be determine by considering the through rate and the terminal charge contained in it, and yet when the reasonableness of the rate is demonstrated, by considering the through rate as reduced, it be then held that the through rate should not be considered. In other words, two absolutely conflicting propositions cannot at the same time be adopted. As the finding was that both the terminal charge of $2 and the through rate as reduced when separately considered were just and reasonable, and as the further finding was that as a consequence of the reduction of from ten to fifteen dollars per car, the rates, considered together, were just and reasonable, it follows that there can be no possible view of the case by which the conclusion that the rates were unjust and unreasonable can be sustained.

These views dispose of the case, but before concluding we advert to a statement made by the Commission in its opinion delivered on the reargument. The expression referred to is as follows:

"It is also said that since the imposition of this terminal charge the Chicago rate has been reduced so that the total amount to-day, including the terminal charge, is much less than it was in 1894, when the charge was imposed. The case finds that such a reduction was made about October 1, 1896. The reduction did not, however, apply to all the territory to which the terminal charge applies, but only to certain limited portions of that territory, and the purpose of it was to equalize the rate from those sections as compared with other sections. There is no claim that this reduction was made on account of the imposition of the terminal charge, or that it would not have been made had no terminal charge been imposed, nor that if the Chicago rate, June 1, 1894, ought to have carried with it a delivery at the stock yards the present rate should not likewise do so."

It is apparent that there is an irreconcilable conflict between the statement thus made and the facts as recited by the Commission in its first report, for therein it was declared that the reduction applied "to live stock from points embraced in the territory covered by this complaint to all western markets including Chicago. . . ." The report deduced from this premise of fact the conclusion that if the through rate could be considered "all ground of complaint has been removed" by the reduction. We find it in reason difficult to treat the statements made after the reargument as substantive findings of fact, overthrowing the facts stated in the first report, for this reason: In the passage which we have already excerpted from the report of the Commission announced after the reargument, it will be seen that it is declared that the previous findings are modified to the extent necessary to make it clearly appear that the terminal rate of 82 independently considered had been found unquestionably to be reasonable, and there is no expression in the report on the reargument tending to show that it was the purpose to modify in other particulars the findings as previously made. The case, therefore, reduces itself to this: The finding in the first report is that the reduction applied to the whole territory and removed all ground of complaint if the through rate could be considered, whilst the statement in the report after the reargument is that the reduction in the through rate did not apply to the whole territory, but was only partial. Aside from this difficulty another confronts us. The first finding of the Commission was that both the through rate and the terminal rate, separately considered as distinct charges, were in and of themselves just and reasonable at the time the complaint was filed, and this is expressly reiterated in the report delivered after the reargument. Now the passage which we have just previously excerpted from the report after the reargument states that the reduction of the through rate was partial, and applied only to portions of the territory, and that it was made in order to "equalize the rates from those sections as compared with other sections." But it is impossible in reason to accept this conclusion, even if it be treated as a finding of fact, if the finding made originally and reiterated after the reargument is to be applied, that is, that the rates when separately considered were just and reasonable. This is necessarily the case, since in consonance with reason it cannot at the same time be declared that the rates separately considered were just and reasonable at the time the complaint was filed, and yet it be found that some of the just and reasonable rates were unequal, and hence unjust, and required to be changed in order to remove the inequality, and therefore the unreasonableness which existed in them. If, however, the conflicts to which we have referred be put out of view and the statement in the report after the reargument, to which we have adverted, be treated as a substantive finding and as overthrowing by implication the findings ex-

pressly made in the first report and some of those expressly reiterated in the second report, we find ourselves nevertheless unable to reverse the court below and direct the execution of the order entered by the Commission. That order was general and operated upon all the carriers in the whole territory covered by the complaint. But if the statement on the rehearing which we are considering be taken as a finding and given, *arguendo*, the force previously stated, then it follows that the rate from the points in the territory to which the reduction applied were just and reasonable, and as to those points the order should not have been rendered, and there is no finding establishing the points to which the reduction applied which would enable us to separate the reasonable from the unreasonable rates. It results that the findings do not afford the basis of even sustaining the order in part. Whether or not, in making the reduction, the terminal charge entered into the minds of the carriers is a matter of no concern. The question is, was the rate as reduced just and reasonable?

Being then constrained to the conclusion that the order of the Commission was not sustained by the facts upon which it was predicated, we cannot enter into an independent investigation of the facts, even if it be conceded the record is in a condition to enable us to do so, in order that new and substantive findings of fact may be evolved, upon which the order of the Commission may be sustained. (*Louisville &c. R. R. Co.* v. *Behlmer*, 175 U. S. 648–675.)

It follows that the decree of the Circuit Court of Appeals, which affirmed the decree of the Circuit Court, refusing to command compliance with the order of the Commission, was right, and it must, therefore, be affirmed. We think, however, in view of what has been said, and in order to prevent all possible misconception, that it should be stated that nothing in the decree refusing to execute the order of the Commission should be construed as preventing that body, if it deems it best to do so, from hereafter commencing proceedings to correct any unreasonableness in the rate resulting from the additional terminal charge as to any territory to which the reduction referred to in the opinion, if any such there be, did not apply.

The decree of the Court of Appeals is therefore affirmed without prejudice to the right of the Commission to hereafter proceed in accordance with the reservation expressed in the opinion just announced.

Mr. Justice BROWN took no part in the decision of this cause.

True copy.

Test:

Clerk Supreme Court, U. S.